CLERK'S COPY.

Vol. I

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1937

No. 397

DUKE POWER COMPANY AND SOUTHERN PUBLIC UTILITIES COMPANY, PETITIONERS,

vs.

GREENWOOD COUNTY AND E. L. BROOKS, S. A. AGNEW AND E. I. DAVIS, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR CERTIORARI FILED SEPTEMBER 10, 1937.

CERTIORARI GRANTED OCTOBER 25, 1937.

VOLUME I

INDEX

	Page
Introduction	1
Bill of Complaint	2
Exhibit I—Resolution attached to Bill of Complaint	20
Exhibit II—Extract from Application—attached to Bill of Complaint	32
Statement as to Exhibit III—attached to Bill of Complaint	34
Exhibit IV—Complaint—Park vs. Greenwood County	34
Exhibit V—Return and Answer—Park vs. Greenwood County	42
Exhibit VI—Petition to Interplead	46
Exhibit VII—Return of Plaintiff, Dr. R. H. Park	53
Exhibit VIII—Return of Defendants	54
Exhibit IX—Order of Judge Stabler refusing Petition to Interplead	57
Exhibit X—Amendments to Original Complaint—Park vs. Greenwood County	59
Subpoena in Equity	62
Back of Subpoena with Return of U. S. Marshal thereon	63
Order Making Harold L. Ickes as Federal Emergency Administrator of Public Works a Party Defendant	65
Separate Answer of Defendant Harold L. Ickes as Federal Emergency Administrator of Public Works	66
Exhibit A—attached to Answer of Ickes—Loan and Grant Agreement between County of Greenwood, S. C. and the United States	73
Answer of Greenwood County, et al	94
Verification	101
Exhibit attached to and made part of Answer of Greenwood County, being a Resolution to Amend a Resolution, etc.	102
Amended and Supplemental Bill of Complaint	109
Motion of Greenwood County to Dismiss Amended Bill of Complaint	115

Page

Motion of Harold L. Ickes to Dismiss Amended Bill of Complaint 116
Opinion of Hon. H. H. Watkins of April 23, 1935.. 117
Order of Hon. H. H. Watkins Overruling Motions to Dismiss and Appointing W. M. Walters, Esq., Special Master 152
Answer of Greenwood County to Amended and Supplemental Bill of Complaint 153
Verification of Answer 155
Answer of Harold L. Ickes to Amended and Supplemental Bill of Complaint 155

STATEMENT OF EVIDENCE (Part I).

Introduction 157
Evidence for the Plaintiffs 157

J. N. Stribling, sworn:
Direct Examination 157
Cross Examination 160
Redirect Examination 160

J. E. Willoughby, sworn:
Direct Examination 161
Cross Examination 163
Redirect Examination 165
Recross Examination 166
Redirect Examination 166
Recross Examination 167

E. C. Marshall, sworn:
Direct Examination 167
Cross Examination 180
Redirect Examination 184

J. E. Sirrine, sworn:
Direct Examination 185

W. G. Perry, sworn:
Direct Examination 200

George Wrigley, sworn:
Direct Examination 202
Cross Examination 203
Redirect Examination 204

Page

C. P. Roberts, sworn:
Direct Examination 204
Cross Examination 216
Redirect Examination 217

F. H. Cothran, sworn:
Direct Examination 219

W. D. Faucette, sworn:
Direct Examination 253
Cross Examination 257
Redirect Examination 260

M. R. Kimbrell, sworn:
Direct Examination 260

STATEMENT OF EVIDENCE (Part II)

Evidence for the Defendants 264

J. W. Barnwell, sworn:
Direct Examination 264
Cross Examination 266

D. T. Duncan, sworn:
Direct Examination 267
Cross Examination 274
Redirect Examination 277
Recross Examination 278

G. R. Barksdale, sworn:
Direct Examination 278
Cross Examination 281

F. R. Sweeney, sworn:
Direct Examination 282
Cross Examination 283
Redirect Examination 284

J. G. Wardlaw, sworn:
Direct Examination 285
Cross Examination 285
Redirect Examination 286

Page

F. H. H. Calhoun, sworn:
Direct Examination 287
Cross Examination 287
Redirect Examination 287
Recross Examination 288

A. C. Bruce, sworn:
Direct Examination 288
Cross Examination 291
Redirect Examination 294

Clarence E. Rose, sworn:
Direct Examination 294
Cross Examination 299
Redirect Examination 307

W. A. Barnett, sworn:
Direct Examination 307
Cross Examination 308
Redirect Examination 308
Recross Examination 308
Redirect Examination 308

R. E. McCaslan, sworn:
Direct Examination 309
Cross Examination 309
Redirect Examination 309

J. C. Smith, sworn:
Direct Examination 309
Cross Examination 310

S. M. Leaman, sworn:
Direct Examination 311

J. H. Milford, sworn:
Direct Examination 311

M. G. Boyle, sworn:
Direct Examination 312

M. C. Willard, sworn:
Direct Examination 312

Emmett I. Davis, sworn:
Direct Examination 312
Cross Examination 314

Page

J. B. Sloan, sworn:
Direct Examination 315
Cross Examination 316

Evidence for the Plaintiffs in Rebuttal:

J. M. Costello, sworn:
Direct Examination 316
Cross Examination 318
Redirect Examination 319

Charles S. Reed, sworn:
Direct Examination 320
Cross Examination 322
Redirect Examination 324

STATEMENT OF EVIDENCE (Part III)

Plaintiff's Exhibit No. 6—Letter dated Nov. 10, 1933 324
Plaintiff's Exhibit No. 7—Letter dated Nov. 14, 1933 326
Plaintiff's Exhibit No. 8—Estimate 326
Plaintiff's Exhibit No. 9—Letter dated Feb. 1, 1935 328
Plaintiff's Exhibit No. 10—Estimate 329
Plaintiff's Exhibit No. 13—Statement of Transmission & Distribution Lines, etc. 331
Plaintiff's Exhibit No. 14—Reductions in Rates made by Plaintiffs 332
Plaintiff's Exhibit No. 15—Primary Power for Textile and Grain Mills contracting for 100 Kilowatts and over 332
Plaintiff's Exhibit No. 16—Residential Electric Service 335
Plaintiff's Exhibit No. 17—Statement of Duke Power Co. of Power sold 338
Plaintiff's Exhibit No. 18—Statement of Customers served by Duke Power Company 340
Plaintiff's Exhibit No. 19—Taxes Paid by Duke Power System, 1934 342
Plaintiff's Exhibit No. 20—Taxes, Greenwood County, paid by Duke Power Company 344
Plaintiff's Exhibit No. 21—Ordinance 344
Plaintiff's Exhibit No. 22—Ordinance 346
Plaintiff's Exhibit No. 23—Ordinance 347

Page

Plaintiff's Exhibit No. 25—Preliminary Estimate S. A. L. Rwy. 348
Plaintiff's Exhibit No. 26—Letter dated Nov. 10, 1933 349
Plaintiff's Exhibit No. 27—Letter dated Nov. 17, 1933 350
Plaintiff's Exhibit No. 28—Letter dated Feb. 12, 1934 351
Plaintiff's Exhibit No. 29—Letter dated Feb. 21, 1934 353
Plaintiff's Exhibit No. 30—Letter dated July 4, 1934 354
Plaintiff's Exhibit No. 31—Letter dated July 10, 1934 355
Plaintiff's Exhibit No. 32—Letter dated Jan. 22, 1935 356
Plaintiff's Exhibit No. 33—Letter dated Jan. 30, 1935 358
Plaintiff's Exhibit No. 34—Letter dated Feb. 5, 1935 359
Plaintiff's Exhibit No. 35—Release No. 989. 361
Plaintiff's Exhibit No. 36—Material parts, Circular No. 1 363
Plaintiff's Exhibit No. 38—Resolution of Special Board for Public Works—Re: Greenwood County, S. C. 368
Plaintiff's Exhibit No. 41—Power Contract between Greenwood County and City of Newberry. . . 371
Plaintiff's Exhibit No. 41—Power Contract between Grendel Mills, Panola Cotton Mills and Greenwood County 373
Plaintiff's Exhibit No. 41—Power Contract between Greenwood County and the Town of Ninety-Six, S. C. 375
Plaintiff's Exhibit No. 41—Power Contract between Greenwood County and Laurens Glass Works 379
Plaintiff's Exhibit No. 41—Power Contract between Greenwood County Municipal Power Plant and Laurens Glass Works 382
Plaintiff's Exhibit No. 41—Power Contract between Farmers Oil Mill and Greenwood County. . . . 386
Plaintiff's Exhibit No. 41—Power Contract between Grenco Oil Co. and Greenwood County. 388
Plaintiff's Exhibit No. 41—Power Contract between Greenwood County Municipal Power Plant and Grenco Oil Co. 391
Plaintiff's Exhibit No. 41—Power Contract between Greenwood County and the City of Greenwood 394
Plaintiff's Exhibit No. 41—Power Contract between Greenwood County and the City of Laurens. . 396
Plaintiff's Exhibit No. 45—Regulations of the S. C. Board of Health, etc. 399

Page

STATEMENT OF EVIDENCE (Part IV)

Defendants' Exhibit No. 2—Statement concerning same 400
Defendants' Exhibit No. 3—Federal Power Commission License Affecting Navigable Waters, etc. 400
Defendants' Exhibit No. 4—Certified Records of the Federal Power Commission 402
Defendants' Exhibit No. 5—Statement concerning same 406
Defendants' Exhibit No. 7—Estimated Cost of Buzzard Roost Project 407
Defendants' Exhibit No. 23—Comparison of Engineer's Estimate and Successful Contractors' Bid 408
Defendants' Exhibit No. 24—Annual Operation and Fixed Charges 409
Defendants' Exhibit No. 25—Amortization Table . . 410
Defendants' Exhibit No. 27—Letter dated Oct. 14, 1933 412
Defendants' Exhibit No. 28—Letter dated Oct. 13, 1933 414
Defendants' Exhibit No. 29—Buzzard's Roost Power Development Project—Description and Conclusions of Dr. F. H. H. Calhoun, Consulting Geologist, Clemson College, S. C. 416
Defendants' Exhibit No. 35—Statement concerning same 420
Defendants' Exhibit No. 36—Minute Book No. 1 of Finance Board for Greenwood County—Exhibit "I"—attached 420
Defendants' Exhibit No. 39—Statement concerning same 422
Defendants' Exhibit No. 42—Agreement dated March 14, 1917 423
Defendants' Exhibit No. 44—Statement of undeveloped Power Sites held by Duke Power Co. in North Carolina, South Carolina and Georgia. 429
Defendants' Exhibit No. 45—List of Plaintiffs' Former Customers 430
Defendants' Exhibit No. 46—Statement concerning same 430

Page

Defendants' Exhibit No. 47—Report of Federal Trade Commission on Duke Power Company 430
Defendants' Exhibit No. 48—Report of Federal Trade Commission on Southern Public Utilities Company 448
Defendants' Exhibit No. 49—Copy of Application of Greenwood County to Public Works Administration for Loan and Grant 461
Defendants' Exhibit No. 50—Resolution for Special Board 463
Defendants' Exhibit No. 51—Resolution of Special Board 464
Defendants' Exhibit No. 52—Resolution, Docket 3972, Oct. 29, 1934 464
Defendants' Exhibit No. 54—Statement concerning same 465
Defendants' Exhibit No. 55—S. A. L. Rwy. Co.'s statement cost of bridge over Saluda River on valuation date June 30, '18 465
Defendants' Exhibit No. 56—Atlantic Coast Line R. R. Co. subsidiary—Charleston & Western Carolina R. R. Co. Valuation Section 1—South Carolina 466
Defendants' Exhibit No. 57—Statement concerning same 467
Defendants' Exhibit No. 58—Letter to Mr. Robinson from Acting State Director, P. W. A. 467
Defendants' Exhibit No. 61—Executive Order appointing H. L. Ickes 470
Defendants' Exhibit No. 62—Executive Order delegating certain functions and powers to the Federal Emergency Administration of Public Works 471
Defendants' Exhibit No. 66—Primary Power Contract 472

Agreement as to Statement of Evidence 474
Order Approving Statement of Evidence 475
Defendants' Motion to Strike Out Certain Testimony 475
Opinion of Hon. H. H. Watkins dated Aug. 10, 1935 477
Decree for Injunction 484
Assignment of Errors 486

Page

Motion of Harold L. Ickes, Federal Emergency Administrator of Public Works..... 492
Contract of November 30, 1935..... 494
Mandate of the Circuit Court of Appeals to the U. S. District Court, Including Order of the Circuit Court of Appeals of Dec. 5, 1935..... 515
Report to Circuit Court of Appeals of Findings of Fact and Conclusions of Law, Pursuant to Order of Remand..... 518
Decree of Judge Watkins Filed December 21, 1935.. 527
Assignments of Error Filed by Defendants, Greenwood County, Etc., Dec., 31, 1935..... 528
Assignments of Error Filed by Defendants, Harold L. Ickes, Federal Emergency Administrator of Public Works, December 31, 1935..... 531
Amended Assignments of Error by Defendants, Greenwood County, Etc., As of December 31, 1935..... 534
Amended Assignments of Error Filed by Defendant, Harold L. Ickes, Federal Emergency Administrator of Public Works, As of Dec. 31, 1935.. 536

VOLUME II

Page

Mandate of the U. S. Supreme Court of Jan. 9, 1937, with Opinion of Said Court Referred to in Said Mandate 539

Order of Judge Glenn Entered Pursuant to Mandate of U. S. Supreme Court 541

Supplemental Answer of Defendant, Greenwood County, Etc 543

Supplemental Answer of Defendant, Harold L. Ickes, Etc 545

Plaintiffs' Reply to Supplemental Answers of the Defendants 546

Order of Judge Glenn of Feb. 1, 1937, Granting Preliminary Injunction 550

STATEMENT OF EVIDENCE.

Introduction 552

Stipulation 553

Plaintiffs' Motion 556

Motion Denied—Exception Taken and Allowed 557

Plaintiffs' Evidence:

C. S. Reed, Witness for Plaintiff, sworn:

Direct Examination 558

Cross Examination 563

Redirect Examination 565

Recross Examination 566

Redirect Examination 566

Recross Examination 566

J. E. Sirrine, Witness for Plaintiff, sworn:

Direct Examination 567

Cross Examination 571

Plaintiffs' Exhibit #46—Order No. 73, Federal Emergency Adm. of Public Works 574

Plaintiffs' Exhibit #47—Press Release No. 709 .. 575

Plaintiffs' Exhibit #49—"Federal Emergency Administration of Public Works to State Engineers" 576

Deposition of Frank T. Post:

Direct Examination 577

Cross Examination 582

Statement as to Post Exhibit No. 1 583

Plaintiffs' Exhibit—Marked Post Exhibit No. 2—Telegram of Nov. 7, 1934 584

Page

Plaintiffs' Exhibit—Marked Post Exhibit No. 4—Letter of Nov. 15, 1934, to Harold L. Ickes..... 585
Statement as to Post Exhibit No. 10 (Original of which is being transmitted to C. C. A.).... 590
Edwin Vennard, Witness for Plaintiff, sworn:
Direct Examination..... 590
Plaintiffs' Exhibit #50—Letter of Aug. 21, 1934, to Edwin Vennard from H. T. Hunt..... 595
Plaintiffs' Exhibit #51—Letter of Oct. 30, 1934, to Edwin Vennard from H. T. Hunt..... 596
Plaintiffs' Exhibit #52—Letter of Aug. 22, 1934, to Edwin Vennard from H. T. Hunt..... 597
Plaintiffs' Exhibit #53—Letter of Aug. 27, 1934, to Edwin Vennard from H. T. Hunt..... 598
Plaintiffs' Exhibit #54—Telegram to Edwin Vennard from H. T. Hunt..... 599
Plaintiffs' Exhibit #55—Letter of Nov. 26, 1934, to Edwin Vennard from H. T. Hunt..... 599
Plaintiffs' Exhibit #56—Letter of Aug. 27, 1934, to Edwin Vennard from H. T. Hunt..... 600
Plaintiffs' Exhibit #57—Letter of Oct. 12, 1934, to Edwin Vennard from H. T. Hunt..... 601
Plaintiffs' Exhibit #58—Letter of Nov. 14, 1934, to Edwin Vennard from H. T. Hunt..... 601
Plaintiffs' Exhibit #59—Telegram to Edwin Vennard from H. T. Hunt..... 602
Cross Examination of Edwin Vennard by Mr. Scott..... 603
Cross Examination of Edwin Vennard by D. W. Robinson, Jr..... 605
Direct Examination..... 605
D. E. Byerley, Witness for Plaintiff, sworn:
Direct Examination..... 606
Plaintiffs' Exhibit #60—Letter of Aug. 22, 1934, to D. E. Byerley from H. T. Hunt..... 608
No Cross Examination.
George H. Carter, Witness for Plaintiff, sworn:
Direct Examination..... 610
Plaintiffs' Exhibit #61—Telegram of Aug. 18, 1934..... 611
Plaintiffs' Exhibit #62—Telegram of Aug. 28, 1934..... 612
Plaintiffs' Exhibit #63—Telegram of Aug. 29, 1934..... 613

Page

Plaintiffs' Exhibit #64—Telegram of Oct. 2, 1934 613
Plaintiffs' Exhibit #65—Telegram of Oct. 6, 1934 614
Plaintiffs' Exhibit #66—Telegram of Oct. 9, 1934 614
Cross Examination 616
Redirect Examination 618
Plaintiffs' Exhibit #67—Letter of Aug. 27, 1934, to T. O. Kennedy from H. T. Hunt 619
Plaintiffs' Exhibit #68—Letter of Sept. 18, 1934, to T. O. Kennedy from H. T. Hunt 620
Plaintiffs' Exhibit #69—Letter of Dec. 5, 1934, to Robt. L. J. Wagar from H. T. Hunt 623
Plaintiffs' Exhibit #70—Letter of Aug. 2, 1934, to C. H. Couser from H. T. Hunt 624
Plaintiffs' Exhibit #71—Letter of Aug. 16, 1934, to Henry T. Hunt from Miles Cary 625
Plaintiffs' Exhibit #72—Letter of Aug. 20, 1934, to Miles Cary from Henry T. Hunt 626
Plaintiffs' Exhibit #73—Letter of Aug. 31, 1934, to Henry T. Hunt from Miles Cary 626
David Nabow, Witness for Plaintiff, sworn:
Direct Examination 628
Cross Examination 629
Redirect Examination 630
Plaintiff Closes.
Defendants' Evidence 637
Testimony of Harold L. Ickes taken before Judge Watkins at the Hearing in Spartanburg on Dec. 12, 1935, introduced as a deposition:
Direct Examination by Mr. Frank 642
Cross Examination 652
Redirect Examination 666
Recross Examination 667
G. R. Barksdale, Witness for Defendants, sworn:
Direct Examination 667
Cross Examination 668
Redirect Examination 668
Recross Examination 668
F. W. Chapman, Witness for Defendants, sworn:
Direct Examination 668
Cross Examination 669
Clark Foreman, Witness for Defendants, sworn:
Direct Examination 670
Cross Examination 677
Redirect Examination 684

Page

Defendants' Exhibit #87—Letter of Oct. 24, 1935, to Clark Foreman from City Clerk, City of Eldon, Iowa 684

Testimony of Emmett I. Davis taken before Judge Watkins at Spartanburg on Dec. 12, 1935, introduced:

Direct Examination 687

Cross Examination 688

Emmett I. Davis, Witness for Defendants, Sworn on Retrial 688

Direct Examination 688

Cross Examination 690

Redirect Examination 691

Recross Examination 692

Redirect Examination 692

Testimony of D. T. Duncan, Witness for Defendants, taken at Spartanburg on Dec. 12, 1935, before Judge Watkins introduced as a Deposition:

Direct Examination 692

D. T. Duncan, Witness for Defendants, sworn on the Retrial 694

Direct Examination 694

Cross Examination 696

Redirect Examination 697

F. R. Sweeney, Witness for the Defendants, sworn:

Direct Examination 698

Cross Examination 698

Defendants' Exhibit #79-A—Letter dated Dec. 18, 1934, to Mayor of Hiram, Ohio, from Henry T. Hunt 699

Defendants rest.

Plaintiffs' Evidence in Rebuttal:

Plaintiffs' Exhibit #74—Letter of Oct. 22, 1935, to City Clerk, Eldon, Iowa, from Clark Foreman 702

Plaintiffs Rest:

Plaintiffs' Exhibit #75—PWA Press Section—Release No. 1044—Oct. 28, 1934 705

Plaintiffs' Exhibit #76—Administrative Order No. 76 (Supplement 1), dated Aug. 8, 1935 709

Plaintiffs' Exhibit #77—Office Order No. 43—Dated Aug. 15, 1935 710

Plaintiffs' Exhibit #78—Office Order No. 43 (Supplement 1), dated Aug. 23, 1935 711

Page

Plaintiffs' Exhibit #79—Administrative Order No. 76 (Supplement 2), dated Aug. 15, 1935 712
Defendants' Exhibit #49—Statement as to this Exhibit, which is the Application of Greenwood County to the Public Works Administration for a loan and grant 712
Defendants' Exhibit #78—Order No. 141 of March 16, 1935, signed by Harold L. Ickes, Administrator 713
Defendants' Exhibit #79—Memorandum for Mr. Hunt, dated Jan. 30, 1935 714
Defendants' Exhibit #80—Letter to City of Coeur D'Alene from H. L. Ickes, dated March —, 1936. 715
Statement as to Defendants' Exhibit #80 (Original of which is being transmitted to C. C. A.—Loan and Grant Agreement between City of Coeur D'Alene, Idaho, and the U. S. A. 720
Defendants' Exhibit #81—Letter of Aug. 13, 1934, to Col. Henry M. Waite from D. E. Byerley 721
Defendants' Exhibit #82—Letter of Apr. 4, 1935, to Henry T. Hunt from Edwin Vennard 722
Statement as to Defendants' Exhibit #83 (Original of which is being transmitted to C. C. A.) 725
Statement as to Defendants' Exhibit #84 (Original of which is being transmitted to C. C. A.) 727
Defendants' Exhibit #88—Minutes of Finance Board of Greenwood County of Nov. 30, 1935 .. 728
Defendants' Exhibit #89—Resolution by Finance Board for Greenwood County, dated Dec. 2, 1935 730
Defendants' Exhibit #90—Sales of Electricity (in K. W. Hrs.) and Gross Revenue Therefrom 734
Defendants' Exhibit #91—Kilowatt-Hour Output "Consolidated," North Carolina and South Carolina, 1928-1936, incl. 734
Plaintiffs' Requests to the Court to Find Certain Facts.. 735
Agreement as to Statement of Evidence 740
Order Allowing Statement of Evidence 741
Order for Transmission of Original Exhibits 741
Opinion of Judge J. Lyles Glenn, Filed June 2, 1937... 744
Findings of Fact and Conclusions of Law, Filed June 2, 1937 779
Final Decree Dismissing Bill and Denying Injunction, Filed June 2, 1937 798

Page

Assignment of Errors Filed by Duke Power Company and Southern Public Utilities Company on June 18, 1937 801
Praecipe 819
Memorandum 824
Stipulation for Printing of Record under Rule 23 of U. S. Circuit Court of Appeals 826
Assignment of Errors Filed by Defendant, Harold L. Ickes, on July 1, 1937 827
Assignment of Errors Filed by Defendants, Greenwood County, Etc., June 19, 1937 829
Clerk's Certificate 830
Supplemental Assignment of Errors and Order Filing Same 831

PROCEEDINGS IN U. S. CIRCUIT COURT OF APPEALS 833
Petition of appellants for stay of proceedings pending appeal 833
Return of appellees Greenwood County and its Finance Board to petition of appellants for stay 838
Argument on petition of appellants for stay of proceedings 843
Order restraining appellees pending appeal 843
Appearance for appellants and cross-appellees 846
Appearance for appellees and cross-appellants 847
Supplemental assignment of errors and order thereon 847
ARGUMENT OF CAUSE 847
Opinion 848
Dissenting opinion 873
DECREE 878
Clerk's certificate 879

Order allowing certiorari 880

TRANSCRIPT OF RECORD

INTRODUCTION.

THE UNITED STATES OF AMERICA,
Western District of South Carolina, to-wit:

At a District Court of the United States for the Western District of South Carolina begun and held at the Federal Building in the city of Rock Hill on the 2nd day of June, 1937.

Present: The Honorable J. Lyles Glenn, District Judge for the Western District of South Carolina.

Among other were the following proceedings, to-wit:

Duke Power Company and Southern Public Utilities Company, Plaintiffs,

vs.

Greenwood County and E. L. Brooks, S. A. Agnew and E. I. Davis, members of and constituting The Finance Board of Greenwood County, and Harold L. Ickes, as Federal Emergency Administrator of Public Works, Defendants.

In Equity No. 451

BILL OF COMPLAINT.

(2) Filed Nov. 7, 1934.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF SOUTH CAROLINA.
IN EQUITY.

Duke Power Company and Southern Public Utilities Company, Plaintiffs,

v.

Greenwood County and E. L. Brooks, S. A. Agnew and E. I. Davis, as members of and constituting The Finance Board for Greenwood County, Defendants.

The plaintiffs, Duke Power Company and Southern Public Utilities Company, for their cause of action against the defendants, allege:

I.

The plaintiff, Duke Power Company, is a corporation duly organized and existing under the laws of the State of New Jersey, and is a citizen and resident of said State. It is domesticated under the laws of the State of South Carolina relative to foreign corporations doing business in that State; it has duly filed in the office of the Secretary of State of said State a written declaration designating Winnsboro, Fairfield County, as its principal place of business therein, and has otherwise duly complied with all the laws of said State, and is duly authorized and licensed to conduct and carry on its business in said State.

II.

(3) The plaintiff, Southern Public Utilities Company, is a corporation duly organized and existing under the laws of the State of Maine, and is a citizen and resident of said State. It is domesticated under the laws of the State of South Carolina relative to foreign corporations doing business in that State; and it has duly filed in the

Office of the Secretary of State of said State a written declaration designating Anderson, Anderson County, as its principal place of business therein, and has otherwise duly complied with all the laws of said State, and is duly authorized and licensed to conduct and carry on its business in said State.

III.

The defendant, Greenwood County, is a body politic and corporate duly organized and existing under the laws of the State of South Carolina; it is located in the Western District of said State, is a citizen thereof, and has legal capacity to sue and be sued.

The defendants, E. L. Brooks, S. A. Agnew and E. I. Davis, each and all of them, are citizens of the State of South Carolina, residing in Greenwood County, in said State, and in the Western District thereof. They are members of and constitute The Finance Board for Greenwood County, which was duly created by Act No. 430 of the General Assembly of South Carolina, approved March 23, 1931, as the governing body of said County. Said Board is charged, among other duties, with the duty of handling the fiscal affairs of said County, and has its office in the City of Greenwood in said County.

IV.

The jurisdiction of this Court is invoked and depends upon the following grounds:

(a) This suit is one of a civil nature in equity and is between citizens of different States, in that the plaintiff, Duke Power Company, is a citizen of the State of New Jersey, the plaintiff, Southern Public Utilities Company, a citizen of the State of Maine, and the defendants, each and all of them, are citizens of the State of South Carolina.

(4) (b) The suit, in addition to being one between citizens of different States, also arises under the Constitution and Laws of the United States, as hereinafter particularly alleged.

(c) The matter in controversy in this suit, as it affects and concerns each of the plaintiffs, exceeds, exclusive of interest and cost, the value of $3,000, in that the direct pecuniary loss, which each plaintiff will suffer unless the defendants are enjoined and restrained from the commission of the alleged wrongful and unlawful acts and conduct hereinafter complained of, as well as the value of the property rights of each plaintiff for which protection is herein sought, very largely exceeds, exclusive of interest and cost, the sum of $3,000.

V.

Southern Public Utilities Company is wholly owned subsidiary of Duke Power Company. Together these corporations constitute what is known as the Duke Power System, and are hereafter together referred to as the "Duke System". Each of said corporations owns valuable property, both real and personal, located in said County of Greenwood, as well as elsewhere in the State of South Carolina, and is a large payer of taxes to the State of South Carolina and to various of the Counties of said State, including the County of Greenwood, as well as to the Government of the United States.

VI.

The Duke System is now, and for a number of years last past has been, engaged in the business of furnishing electric light and power service to the cities, towns and communities and to the citizens, residents and industrial enterprises in the following Counties in the State of South Carolina, to-wit: York, Cherokee, Spartanburg, Greenville, Pickens, Oconee, Anderson, Chester, Laurens, Newberry, Lancaster, Abbeville, Greenwood and Kershaw. Said System has secured and now owns and uses for this purpose valuable franchises and operating rights in 54 cities and towns in said Counties, including most of the principal cities and towns in said Counties, 10 of (5) said cities and towns being located in the Counties of Greenwood, Newberry and Laurens, in which three Counties the defendant, Greenwood County, intends through its proposed Buzzard Roost Project (hereinafter complained of) to engage in the generation, distribution and sale of electric power in competition with said Duke Sys-

tem, as hereinafter more particularly stated. Each of said corporations composing said Duke System is an electrical public utility under the laws of the State of South Carolina and subject to the jurisdiction and regulation of the Railroad Commission under, as well as to the benefit and protection of, the Act entitled "An Act Regulating Persons, Corporations, and Municipalities engaged in the Generation, Transmission, Delivery or Furnishing of Electricity for Light, Heat or Power, etc.", approved April 8, 1932, and the amendments thereof and thereto.

VII.

Said Duke System, in order to conduct its said business in said State, carry out the terms of its said franchises and operating rights, and perform the functions and duties of the said corporations composing said Duke System as public service corporations, has invested a great many millions of dollars in generating, transmission and distribution facilities for the production, sale and distribution of electric power or energy and are under obligation by virtue of the Laws of the State of South Carolina to continue to maintain and operate these facilities for the purpose of serving the territory in which the Duke System does business as aforesaid. The generating facilities available for this service consist primarily of hydro-electric plants, supplemented with storage reservoirs and with steam capacity. At present the total installed capacity of these generating facilities available for serving the territory in said State in which said Duke System does business in 883,705 killowatts. Said Duke System now owns and operates in said State 2,695.38 miles of transmission and distribution lines, including transmission and distribution lines owned and operated by said System in Greenwood, Newberry and Laurens Counties, which are connected with all the said generating facilities of said System. These generating, (6) transmitting and distributing facilities of said Duke System are available for and adequate to meet all requirements for electric service which now exists, or for years to come may hereafter exist, in said Counties.

VIII.

The defendant, Greenwood County, is proceeding to construct and operate, and unless prevented by this Honorable Court will construct and operate on the Saluda River in the State of South Carolina, at a point known as "Buzzard Roost", a project or works (hereinafter referred to as the "Buzzard Roost Project"), consisting of a hydro-electric plant with transmission and distribution lines extending into and through the Counties of Greenwood, Newberry and Laurens, for the purpose of engaging in the business of furnishing electric current and power to cities and towns, to industrial enterprises, to private individuals, and to the public generally within and without the boundaries of said Greenwood County for domestic, commercial and industrial uses, as more particularly set forth in that certain resolution adopted by The Finance Board for Greenwood County on October 6, 1934, a copy of which is hereto attached, marked Exhibit "I", and made a part of this bill of complaint, and also as set forth in the application filed by said County on September 13, 1934, with the Federal Power Commission for a license for said project, as shown by the extract from said application hereto attached, marked Exhibit "II", and made a part of this bill of complaint.

IX.

The application of said County to the Federal Power Commission states that the total cost of said Buzzard Roost Project, including all necessary lands, materials, rights of way, labor and supplies, for constructing and equipping the plant, and the transmission and distribution lines which will constitute said project, will be the sum of $2,767,000, and said resolution of October 6, 1934, declares that an estimate of the costs of said project has been made and filed with The Finance Board of Greenwood County by engineers theretofore employed for that (7) purpose, and that the amount of such estimate is $2,767,000, which estimate is adopted and approved by said resolution. The application to the Federal Power Commission further states that: "The project will sell approximately 30,000,000 K. W. H. yearly of Primary Power and 20,000,000 K. W. H. yearly of Secondary Pow-

er''. The rates at which the County is selling and offering for sale power that may be produced by said project are set forth in the extract from said application hereto attached as Exhibit ''II''.

X.

Duke System is informed and believes, and therefore alleges and charges, that the defendant County has made application to the Administrator of Public Works, created under Title II of the National Industrial Recovery Act, for the sum of $2,767,000 to be used by said County in defraying the cost of constructing said Buzzard Roost Project, the same to consist of a grant of $547,000 to said County and a loan of $2,200,000 to said County upon bonds to be issued as set forth in said resolution (Exhibit ''I'') and which will be so issued by said County unless said County is restrained by this Honorable Court from so doing.

XI.

The Duke System is informed and believes, and therefore alleges and charges, that said County has entered into, or intends to enter into, and will enter into, unless restrained by this Honorable Court, a contract with the United States of America whereby it will undertake, covenant and agree to complete said Buzzard Roost Project in all respects, notwithstanding said project may cost in excess of said $2,767,000; and said Duke System is further informed and believes, and therefore alleges and charges, that in and by the terms of said resolution (Exhibit ''I'') and of the bonds that have been or may be issued pursuant thereto said County irrevocably undertakes, covenants and agrees to operate said Buzzard Roost Project and maintain the same in good condition, regardless of the incomes and revenues that may be de-
(8) rived therefrom; and said Duke System is further informed and believes, and therefore alleges and charges, upon the facts herein stated, that said undertakings, covenants and agreements of said County in and by said contract and in and by said resolution and the bonds issued or to be issued thereunder are, and each of the same will be, an indebtedness and obligation of said

County and its taxpayers which will constitute a general liability of said County and its taxpayers; and said Duke System is further advised and believes, and therefore alleges, that said County has no authority to enter into any contract, covenant or agreement pledging its general credit or creating a general liability against said County and its taxpayers, for the construction or operation of said project.

XII.

The Duke System has caused said application, and the plans and estimates accompanying it, to be carefully and thoroughly studied by competent engineers, and is informed by them and believes, and therefore alleges:

1. That said Buzzard Roost Project will cost at least $976,961 more to construct, as designed in said application, than the cost of $2,767,000 as set forth in said application;

2. That the design of said project as set forth in said application does not make adequate provision for the safety of the structures thereof, nor adequate provision against damage to property above the dam, and for the protection of life and property below said dam, and in order to construct said project with reasonable safety to said structures, and with reasonable safeguards for the protection of life and property, it will cost at least $1,217,591 more to construct than the cost of $2,767,000 estimated therefor in said application;

3. That the primary power available for sale from said project will not exceed 25,750,000 K. W. H. per year; and that the secondary power available for sale from said project will not exceed (giving the project the ad-
(9) vantage of averaging good water years with low water years) 10,000,000 K. W. H. per year;

4. That the necesary cost of operating said project, including in such cost the provisions and reservations (other than a reserve for improvements, betterments and extensions), required by Sec. 21 of said Act No. 299 of the Acts of 1933, will not be less than $341,273 per year;

5. That at the rates for power fixed in said resolution (Exhibit "I") as well as at the rates for power which said application, in the extract therefrom attached as Exhibit "II", shows Greenwood County is selling and offering to sell such power, the annual revenues from the sale of power produced by such project, assuming the sale of every available kilowatt hour of such power, will not exceed $268,875 per year; and such project at said rates will not be self-liquidating, but on the contrary at such rates for such power said project will be a losing venture that must inevitably fail.

The Duke System is further informed, advised and believes, and therefore alleges, that said project will not be able to sell continuously every available K. W. H. of such power; that as a matter of fact the annual revenues from the sale of power produced by said project will be substantially below the above stated amount of $268,875; and that in order for said County to complete said project and to operate and maintain the same in accordance with the covenants and agreements it has made, or intends to make, in these respects as hereinbefore alleged, it will be necessary for said County, under and by reason of the general liability imposed upon said County and its taxpayers by said covenants and agreements, to raise and expend by means of its general credit at least the sum of $1,217,591 for the completion of said project and at least the sum of $72,000 annually for the operation and maintenance of said project, assuming the sale of every available K. W. H. of both primary and secondary power, an ideal impossible of attainment in actual operation, and even if said project should be able to sell as much as ninety (90%) percentum of all the available K. W. Hrs. (10) of such power the annual deficit for operation and maintenance would be approximately $100,000.

XIII.

Said Duke System is informed and believes, and therefore avers and charges, that said County in all matters pertaining to the said Buzzard Roost Project is represented by and acting through the said The Finance Board of Greenwood County, consisting as above alleged of E. L. Brooks, S. A. Agnew and E. I. Davis, the members thereof.

XIV.

The Duke System through the use of its properties, facilities, franchises and operating rights, hereinbefore described, and under written contracts and at rates approved by the Railroad Commission of South Carolina under the various Regulatory Acts of said State, including the Act approved April 8, 1932, and the amendments thereto, is now, and for a number of years has been, furnishing electric current and power to the principal customers with whom Greenwood County has entered into contracts, and with whom it proposes to enter into contracts, for the sale of electric power and current from said Buzzard Roost Project.

XV.

Said Duke System is informed, advised and believes, and therefore alleges and charges, that the Acts of the General Assembly of the State of South Carolina, under which said County proposes to construct and operate said Buzzard Roost Project, secure funds and enter into covenants and agreements for that purpose, do not authorize said County to construct and operate said project or to enter into covenants and agreements for that purpose, except under facts and circumstances that will ensure that said project will be a self-liquidating and self-supporting project, constructed wholly out of special funds obtained by grant or through the issue of bonds, as in said Acts authorized, in a manner that will not constitute any liability whatever upon the said County or its (11) taxpayers or make necessary recourse to the general funds of the County or the pledging of its general credit; that under the facts and circumstances of this case, as herein alleged, said project will not be self-liquidating and self-supporting, the said grant and loan aggregating $2,767,000 which said Court proposes to secure as hereinbefore alleged for use in the construction of said project will be totally inadequate for the construction thereof, and it will be necessary for said County to pledge its general credit or have recourse to its general funds and involve itself and its taxpayers in pecuniary liability for the construction and operation of said project; and that therefore said County is not authorized by said Acts, or any of them, to construct and operate

said Buzzard Roost Project, and the construction and operation thereof as proposed under the facts of this case will constitute illegal competition with the Duke System and the said business, franchises and properties thereof and on that account should be enjoined and restrained by this Honorable Court.

XVI.

The Revenue Bond Act of the State of South Carolina (No. 299) approved May 8, 1933 (38 Stat. at Large 411), provides that the rates charged for services furnished by projects acquired or constructed under it shall not be subject to supervision or regulation by any State bureau, board, commission or other like instrumentality or agency thereof. In lieu of such supervision and regulation said Act provides, particularly in and by Sec. 21 thereof, that rates for services furnished by any project, so acquired or constructed, shall, precedent to the issuance of any bonds under said Act, be fixed by ordinance in an amount that shall be sufficient to provide from the revenues of said project, for payment of the interest and principal of all such bonds as and when the same become due and payable, for creating a bond and interest redemption fund therefor, for payment of the expenses of administration, operation and maintenance of such project in good repair and working order, for building up a proper reserve for depreciation of said project, and for building up a proper reserve for improvements, betterments and extensions of said project. The Act of
(12) said State (No. 1095) approved April 12, 1934 (38 Stat. at Large 2020) which authorizes the Finance Board for Greenwood County to borrow funds from the Public Works Administration for the construction of said Buzzard Roost Project specifically requires that bonds issued under said Act for such funds shall be issued "in accordance with the terms, conditions and powers granted and given in Act No. 299 of the Acts of the General Assembly, 1933, including all amendments thereto."

In the said application filed by said County with the Federal Power Commission there are stated certain rates upon the basis of which said County has entered into contracts, and is endeavoring to enter into still further contracts, for the sale of power produced by said Buzzard Roost Project to those who are now, and for a

number of years have been, customers of these plaintiffs under written contracts, at rates duly established by the constituted authorities of the State of South Carolina, as more particularly set forth in the extract from said application (hereto attached as Exhibit "II"). Said Finance Board of said County in and by said Resolution (hereto attached as Exhibit "I") has fixed the rates therein stated for the power produced by said Buzzard Roost Project and on the basis of said rates is proposing to issue, and will issue unless restrained by this Honorable Court, bonds for securing funds for the construction of said Buzzard Roost Project as in said resolution set forth.

Said Duke System is informed and believes, and therefore avers and charges, that upon and by reason of the facts and things herein stated said rates thus stated in said application and thus fixed in said resolution are, and will be, entirely inadequate to meet the requirements of said Acts with respect to said rates and do not and will not constitute a compliance with said requirements of said Acts as respects said Buzzard Roost Project, on which account the fixing of said rates, the issuing of bonds on the faith of said rates, the making of contracts on the basis of said rates for the power produced by said project, as well as any act or thing done in or about the construction and operation of said Buzzard Roost Project on the basis of any such rates will (13) be, and is, wholly unauthorized and illegal and, if permitted to continue, will constitute illegal competition with the Duke System and the business, franchises and properties thereof, to the great and irreparable injury of the same; and that all and every action or actions on the part of said County in connection with or in furtherance of said Buzzard Roost Project on the basis of said inadequate, insufficient and unlawful rates should be enjoined and restrained by this Honorable Court as wholly unauthorized and illegal.

XVII.

An essential, inseparable and indispensable part of said Buzzard Roost Project, as shown by said resolution of October 6, 1934, pursuant to which the County proposes to construct, operate and finance said project, and also as shown by said application filed with the Federal

Power Commission, is its construction for and use in the sale and distribution of electric current and power as a public utility business to cities and towns, industrial enterprises, private individuals, and the public generally, outside the limits of said County, for general domestic, commercial and industrial uses, such sale and distribution outside the limits of said County being a principal part of the proposed business of said project. Said Duke System is advised and believes, and therefore alleges and charges, that said County has no authority to construct and operate said project for the purpose of thus selling and distributing electric current and power and thereby conducting a public utility business beyond the limits of said County. Said Duke System therefore alleges and charges that any construction or use of said project as a public utility business for such sale and distribution of power produced thereby to customers located beyond the limits of said County, as said County proposes to do, is and will be an illegal and *ultra vires* act on the part of defendants, and will constitute illegal competition with said Duke System, and the business, franchises and property thereof, to the great and irreparable injury of same, on account whereof any such construction or use of said project by the defendants should be enjoined and restrained by this Honorable Court.

(14) XVIII.

Said Duke System is informed, advised and believes, and therefore alleges and charges:

(1) That said Buzzard Roost Project is intended to be, and will be, constructed and operated as a purely local enterprise; it is not intended to engage, and will not engage, in interstate commerce; neither its construction nor operation would promote the general welfare of the United States within the meaning of the Constitution of the United States; and it is not a part of or included within the "comprehensive program of Public Works", which said National Industrial Recovery Act in and by Sec. 202 thereof requires the Administrator under the direction of the President to prepare; that said Buzzard Roost Project is not such a project as may be constructed or financed, or in the aid of which funds

may be granted or loaned, by the Administrator under the provisions of Sec. 203 of said National Industrial Recovery Act; that the Congress of the United States, in and by said National Industrial Recovery Act, has not authorized the granting or lending of Federal Funds for the construction of such a project as said Buzzard Roost Project; that the Administrator of Public Works is not authorized to make and the County of Greenwood is not authorized to receive and accept, any Federal Funds by grant, loan or otherwise, for the construction or operation of said project; that the receipt and acceptance of any such loan and grant from the Public Works Administration, as well as the use of any funds so obtained in the construction and operation of said project, will be contrary to the terms of the National Industrial Recovery Act respecting the making of loans and grants by the Public Works Administration, and render said Greenwood County and the taxpayers thereof liable for the return of any such funds so received, with legal interest thereon, and also render illegal the operation of said project in competition with said Duke System and the business, franchises and properties thereof.

(2) That if said National Industrial Recovery Act purports to authorize the use of Federal Funds for the construction and operation of said Buzzard RoostProject, (15) said Act, in so far as it purports to authorize the use of such funds for such purpose, is unconstitutional, null and void, in that the Congress of the United States has no power to authorize the use of such funds for such purpose under either the general welfare clause contained in Article I, Sec. 8, Clause 1, of the Constitution of the United States, or the Commerce Clause contained in Clause 3 of said Section of said Constitution, or under any other clause or provision of said Constitution, such an Act is forbidden to Congress by the due process clause of the 5th Amendment to said Constitution, and such power is expressly withheld from the Congress of the United States by Article X of said Constitution.

(3) That should said Buzzard Roost Project be constructed and operated with any such Federal Funds so obtained, then such construction and operation of such project will constitute and be an illegal competition by

and on the part of the defendants with the valuable properties, franchises, operating rights and business of said Duke System, built up and acquired through years of effort at the expenditure of many millions of dollars, and wrongfully cause the said Duke System great and irreparable injury, on which account said Duke System has a right to complain of said threatened competition and to have the same enjoined and restrained because of the illegality thereof.

XIX.

As hereinbefore stated, Duke System is informed, advised and believes, and therefore alleges and charges, that said County, acting by and through said Finance Board, either has entered into or intends to enter into a contract with the United States of America, obligating itself to complete said Buzzard Roost Project regardless of how much the completion thereof may cost in excess of said loan and grant of $2,767,000; that the construction of said Buzzard Roost Project will cost at least the sum of $1,217,591 in excess of said $2,767,000; that said contract will constitute, and is intended to constitute, for the amount of such excess cost, a general (16) liability upon said County and its taxpayers; that the obligation of said County to defray such excess cost under said contract for the construction of said Buzzard Roost Project, together with the existing bonded indebtedness of said County, will amount to more indebtedness in the aggregate than eight percentum (8%) of the value of all taxable property within said County as valued for State taxation; and therefore said contract, as well as any part or portion of any Act of the General Assembly of the State of South Carolina authorizing or purporting to authorize said contract, is and will be contrary to and in violation of Art. X, Secs. 5 and 6, of the Constitution of the State of South Carolina, and hence illegal and void, on which account the making of said contract to complete said project by or on behalf of said County, or the performance thereof, if said contract has already been entered into by said County, should be enjoined and restrained by this Honorable Court.

XX.

The Duke System is advised and believes, and therefore avers and charges: That the Sections of the National Industrial Recovery Act, which created the Public Works Administration and authorized the granting and lending of Federal Funds thereby, properly construed, do not authorize the making of such loans upon bonds payable as to principal and interest solely from the proposed project and revenues thereof, such as those authorized by said Act. No. 299 as originally enacted, but authorizes such loans only to existing municipal entities upon the faith and the credit of such entities; that in recognition thereof Act. No. 902 of the State of South Carolina, approved April 12, 1934, in and by Sec. 1-D thereof, amended said Act No. 299 by repealing "all sections, provisions and clauses" of said Act "in so far as the same are in conflict with the Public Works Administration Act" (meaning thereby Title II of the National Industrial Recovery Act) in order to enable a city, county, township or municipality acquiring or constructing a project under said Act No. 299 "to qualify for the securing of the loan available from the Public Works Administration of the Federal Government" for financing said project; that said Act No. 1095, approved April 12, 1934, which au-
(17) thorizes the Finance Board of Greenwood County to do any and all acts necessary and incident to securing a loan from the Public Works Administration for said Buzzard Roost Project, expressly requires that the "bonds or securities" issued thereunder for such loans shall be "in accordance with the terms, conditions and powers granted and given in said Act No. 299 of the Acts of the General Assembly, 1933, including all amendments thereto"; that by reason of said terms of said National Industrial Recovery Act and of said amendment of said Act No. 299 the Public Works Administration is not authorized to accept; for any such loans for said Buzzard Roost Project, bonds which are payable as to principal and interest solely from said project and the revenues thereof, but only bonds which will constitute indebtedness for which said Greenwood County, as well as the taxpayers thereof, will be generally liable, and that such bonded indebtedness, as is thus required by the terms of said National Industrial Recovery Act and of said amendment of said Act No. 299, which said County

proposes to contract for the construction of said project, taken together with the existing bonded indebtedness of said County, will make an aggregate of indebtedness of said County greater than eight percentum (8%) of the value of all taxable properties in said County, as valued for State taxation, and will constitute indebtedness created by said County and bonds issued by said County contrary to the provisions of Secs. 5 and 6 of Article X of the Constitution of the State of South Carolina and said County is unauthorized to create such indebtedness or to issue such bonds or to borrow or secure funds by virtue thereof, and said County should be wholly enjoined and restrained by this Honorable Court from so doing.

XXI.

The Supreme Court of the State of South Carolina on October 31, 1934, filed its opinion in the case of Park v. Greenwood County, et al. A true copy of said opinion is attached hereto as Exhibit "III". In said opinion said Court stated and grouped "the issues made by the pleadings" in said case as follows:

(18) "1. May the Legislature permit or authorize a county to construct and operate a hydro-electric plant for the uses referred to above?

"2. Do the revenue bonds issued, or here sought to be issued, pursuant to the act of May 8, 1933, constitute debts within the limitations of Section 7 of Article VIII, and sections 5 and 6 of Article X of the Constitution?

"3. Does the proposed ordinance, submitted as an exhibit to the pleadings, comply with the provisions of the act of May 8, 1933?"

Said action was a friendly litigation, instituted, as plaintiffs are informed and believed, by the plaintiff therein at the request of the defendants therein. In said action the plaintiff, Dr. R. H. Park, as a taxpayer of said County of Greenwood, sued on behalf of himself and other like taxpayers, to restrain said County from proceeding with said Buzzard Roost Project because of certain provisions of the Constitution of said State upon

which the complaint in said action relied for the injunctive relief it prayed. A true copy of the original complaint and of the answer and return thereto, both filed September 26, 1934, are hereto attached as Exhibits "IV" and "V", respectively. Said Duke System being, as hereinbefore stated, taxpayers of said County, with large properties therein, and greatly threatened and affected by said project, filed in said action a petition praying leave to interplead therein. A true copy of said petition is hereto attached as Exhibit "VI". The return of the plaintiff and of the defendants to said petition resisted the prayer thereof on the ground that the granting to the Duke Sysem of the privilege of interpleading in said action would change the issues presented by the pleadings in said action and delay the consideration of and decision in said action. True copies of said two returns are hereto attached as Exhibits "VII" and "VIII", respectively. By order entered October 9, 1934 (a true copy of which is hereto attached as Exhibit "IX") said Court refused said petition to interplead and denied the Duke System the right to become a party to said action, but accorded the Duke System the privilege "if they so desire, to file an argument in this case (19) upon the issues made by the pleadings" at the hearing in said action, which said order set for October 12, 1934. Said order, in effect, confined the Duke System to the mere filing of a brief *amicus curiae* in said action and thereby excluded, and was intended to exclude, the Duke System not only from presenting any facts or issues in said action not already presented by the pleadings therein, but even from any control over or with respect to the issues or facts presented by the pleadings in said action or that might thereafter be presented in said action. At the hearing of said action on October 12, 1934, an amendment of the complaint therein was filed by the consent of the parties thereto. A true copy of said amendment is hereto attached as Exhibit "X", the resolution therein referred to being the resolution, a true copy of which is hereby attached as Exhibit "I". But said Duke System did not appear in said action at such hearing, by argument or otherwise, as it could not by reason of said order present and have considered, as it had intended to do in said action, the facts and issues set forth in this bill of complaint, and said facts and

issues were not presented in or considered by the Supreme Court of said State in said action.

XXII.

The plaintiffs have no remedy in the premises, except in a Court of Equity, and unless the defendants are enjoined and restrained from proceeding with the construction and operation of said Buzzard Roost Project and from issuing bonds, securing funds, making contracts and doing any other acts and things in furtherance of such project, each of the plaintiffs will suffer serious and irreparable injury therefrom and thereby in its business, franchises and property in the respects and for the reasons hereinbefore set forth.

WHEREFORE, said Duke Power Company and Southern Public Utilities Company pray, and each prays:

(1) For the writ of subpoena of the United States directed to said defendants and requiring them, and each of them, to make full, true and direct answer to this (20) bill of complaint, but not under oath, answers under oath being hereby expressly waived.

(2) For a perpetual injunction, permanently enjoining and restraining the defendants, and each of them, from constructing and operating said Buzzard Roost Project and from issuing bonds, securing funds, making contracts and doing any other acts and things in furtherance of such project.

(3) For all such other and further general relief as to equity may seem meet or the nature of the case require.

H. J. HAYNSWORTH,
W. R. PERKINS,
J. H. MARION,
W. S. O'B. ROBINSON, JR.,
Attorneys for Plaintiffs.

EXHIBIT I.

P. W. 19931.

A RESOLUTION PROVIDING FOR THE ISSUANCE OF TWO MILLION TWO HUNDRED TWENTY THOUSAND DOLLARS ($2,220,000) REVENUE BONDS, OF THE COUNTY OF GREENWOOD, SOUTH CAROLINA, FOR THE CONSTRUCTION OF A HYDRO-ELECTRIC POWER PLANT IN ACCORDANCE WITH THE PROVISIONS OF ACT 299, ACT OF SOUTH CAROLINA, 1933, AS AMENDED, AND ACT 1095, ACT OF SOUTH CAROLINA, 1934.

BE IT RESOLVED BY THE FINANCE BOARD OF GREENWOOD COUNTY, SOUTH CAROLINA, AS FOLLOWS:

Section 1. It is hereby determined and declared that an estimate of the cost of constructing a hydro-electric plant, comprising an earthen dam across Saluda River, a 15,000-K. W. generating station with necessary control equipment and approximately 190 miles of high and low tension distribution lines, for the purpose of (21) furnishing electric current and power to private individuals, corporations, and municipalities within and without the boundaries of the County for domestic, commercial and industrial use, such project, and any improvements and extensions which may be made thereto, being hereinafter referred to as the "system", has heretofore been made and filed with this body at its instance by engineers heretofore employed for that purpose, and that the amount of such estimate is TWO MILLION, SEVEN HUNDRED SIXTY-SEVEN THOUSAND DOLLARS ($2,767,000) which estimate is hereby adopted and approved.

Section 2. That in order to provide for the payment of the costs, in excess of the grant made to the County of Greenwood by the United States of America, of constructing the improvement described in Section 1 hereof, there shall be issued TWO MILLION, TWO HUNDRED TWENTY THOUSAND DOLLARS ($2,220,000), of County of Greenwood, Hydro-electric Revenue Bonds of the County of Greenwood, South Caro-

lina, dated October 1, 1934, of the denomination of $1,000, numbered from one to 2,200 inclusive bearing interest at the rate of four per centum (4%) per annum, payable semi-annually on October 1, and April 1, of each year, beginning April 1, 1934; said bonds shall mature serially on the first day of October of each year as follows, to-wit:

Year	Amount	Year	Amount
1937	$50,000	1951	$80,000
1938	50,000	1952	80,000
1939	55,000	1953	85,000
1940	55,000	1954	85,000
1941	60,000	1955	90,000
1942	60,000	1956	90,000
1943	65,000	1957	95,000
1944	65,000	1958	95,000
1945	65,000	1959	100,000
1946	70,000	1960	100,000
1947	70,000	1961	105,000
1948	70,000	1962	105,000
1949	75,000	1963	110,000
1950	75,000	1964	115,000

(22) Said bonds together with interest thereon, shall be payable only out of the Bond and Interest Redemption Account hereinafter created and shall be a valid claim of the holders hereof only against said fund, and the income and revenues of the system pledged to such fund.

Section 3. Said bonds and coupons when issued shall be in substantially the following form:

No. $1,000.00

UNITED STATES OF AMERICA
STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD

HYDRO-ELECTRIC POWER
REVENUE BOND

The County of Greenwood, State of South Carolina, hereby acknowledges itself indebted and for value received promises to pay to the bearer, or if this bond be registered, to the registered holder hereof from the revenue hereinafter described the sum of

ONE THOUSAND DOLLARS ($1,000)

on the first day of October, 19...., and to pay interest on said sum from the date hereof until paid, at the rate of four per cent (4%) per annum, payable semi-annually on the first days of April and October in each year, upon presentation and surrender of the annexed interest coupons as the same severally mature, both principal and interest being payable in lawful money of the United States of America at the office of the County Treasurer of Greenwood County in the City of Greenwood, South Carolina, or at the option of the holder at the Guaranty Trust Co. in the Borough of Manhattan, City and State of New York.

This bond is one of a series of bonds of like date and tenor except as to maturity, and is issued pursuant to Act No. 299 of the Acts of 1933 of South Carolina, as amended, Act 1095, Acts of 1934 of South Carolina and a resolution duly adopted by the Finance Board of Greenwood County on the 6th day of October, 1934, for the (23) purpose of defraying the cost of a hydro-electric power system of said County described in said Resolution.

Both principal of and interest on this bond are payable solely from a first lien on and pledge of a fixed amount of the gross revenues derived from the operation of the hydro-electric power system of said County as subsequently improved and extended which amount shall be sufficient at all times to pay the principal of and interest on the bonds when the same shall become due and payable. Neither this bond nor any of the interest coupons hereto attached constitute an indebtedness of said County of Greenwood within the meaning of any constitutional provision or statutory limitation.

Said County hereby agrees that it will continuously operate said hydro-electric power system and fix and maintain rates for the services furnished by said system as shall be sufficient at all times to provide for the payment of the interest on and principal of this bond and the issue of which it forms a part as and when the same becomes due and payable, to create a "Bond and Interest Redemption Fund" therefor, to provide for

the payment of the expenses of the administration and operation and such expenses for maintenance of said system as may be necessary to preserve the same in good repair and working order, to build up a reserve for depreciation of said system and to build up a reserve for improvements, betterments and extensions to said system other than those necessary to maintain the same in good repair and working order.

Under authority of said Act, as amended, and by the resolution authorizing the issuance of this bond, there has been created and granted to and in favor of the holder or holders of this bond and the issue of which it forms a part and to and in favor of the holder or holders of the coupons attached to said bonds a statutory lien, which is hereby recognized as valid and binding on said hydro-electric power system, with the appurtenances and extensions thereto, and said system shall remain subject to said statutory lien until the payment in full of the interest on and the principal of this bond and the issue of which it forms a part.

* * * * * * * * *

(24) The principal of and interest of this bond are exempt from any and all state, county and municipal and other taxation whatsoever under the laws of the State of South Carolina.

It is hereby certified and recited, that all conditions, acts and things required by the constitution or statutes of the State of South Carolina to exist, be performed, and happen precedent to or in the issuance of this bond exist, have been performed and have happened.

IN WITNESS WHEREOF, said County of Greenwood in the State of South Carolina, has caused this bond to be signed by its County Supervisor, and the County Treasurer and its corporate seal to be impressed thereon, and counter-signed and approved by the County Supervisor and the annexed coupons to be authenticated

by the facsimile signature of said ..... and this bond to be dated the first day of October, 1934.

.....
County Supervisor.

.....
County Treasurer.

Counter Signed and approved:

.....
County Supervisor.

* * * * * * *

Section 4. From and after the delivery of any bond issued under the provisions of this resolution, the system of the County of Greenwood shall be operated on a fiscal year basis, commencing on January 1st each year and ending on January 1st, of the following year, and on that basis the entire income and revenues of said system shall be set aside and deposited into separate and special funds as follows:

There shall be and there is hereby created a fund designated "County of Greenwood hydro-electric power (25) Bond and Interest Redemption Fund" of the County of Greenwood, South Carolina (hereinafter called the "Bond Fund"); there shall be paid into and there is hereby pledged to said Bond Fund from the gross revenues of the system as the same accrue, from month to month, such amount as will be necessary to pay the principal and interest requirements on the bonds on the next ensuing interest or bond maturity date, plus an additional margin of 10% of the principal and interest requirements for so long a time as is necessary to create a surplus equal to the principal and interest requirements on the bonds for the next succeeding 24 months. Provided, however, that no further payments shall be made into said Bond Fund when the amount held therein is equal to the total amount of interest and principal that will be payable at the maturity of all the outstanding bonds. If in any month the revenues derived from the operation of said system are insufficient to provide for

the payments into the Bond Fund herein required, then the amount of such deficiency shall be added to the amounts required to be so paid in the next succeeding month. The Bond Fund shall be continuously secured by a pledge of direct obligations of the United States Government having an aggregate market value, at all times, at least equal to the sum on deposit in said Bond Fund, or shall be invested in direct obligations of the United States Government.

Pursuant to Section 22 of said Act No. 299, as amended, there are hereby created Funds designated respectively "Operation and Maintenance Fund", "Depreciation Fun" and "Contingent Fund", and there are hereby pledged and ordered to be paid into the said Funds in each fiscal year from the remaining gross revenues and in the following order:

(a) INTO THE OPERATION AND MAINTENANCE FUND, a sum of not less than $40,000 to provide for the payment of all reasonable expenses of administration, operation, and such expenses for maintenance as may be reasonably necessary to preserve the system in good repair and working order;

(b) INTO THE DEPRECIATION FUND, a sum (26) of not less than $50,000 to build up a reasonable reserve for depreciation of said system; and

(c) INTO THE CONTINGENT FUND, a sum of not less than $10,000 to build up a reasonable reserve for improvements, betterments and extensions to said system, other than those expenses which are reasonably necessary to maintain the same in good repair and working order as hereinabove provided for.

Any revenues of the system remaining after the foregoing payments may be disposed of as the Finance Board of Greenwood County shall determine to be for the best interest of the County.

Nothing contained in this section of this resolution shall be deemed to prevent the transfer of any moneys contained in said "Operation and Maintenance Fund", or "Depreciation Fund" or "Contingent Fund", pur-

suant to and within the limitations prescribed by Sections 26, 27 and 28 of said Act Number 299, as amended.

Section 5. It is hereby determined that the rates for services furnished by said system shall, until otherwise fixed and revised pursuant to said Act Number 299, as amended, be as follows, to-wit:

SCHEDULE A

Greenwood County Municipal Power Plant

Wholesale Power Rates to Municipalities

Wholesale Rate:

Demand—Charge—$1.00 per K. W. per month.

Demand—Maximum integrated sixty (60) minute period.

(27) Energy Charge:

First—100,000 Kilowatt hours per month at 5. mills per K. W. H.
Next—200,000 Kilowatt hours per month at 4. mills per K. W. H.
Over—300,000. Kilowatt hours per month at 3. mills per K. W. H.

In no case shall the energy plus the demand charge aggregate less than 7.0 Mills per K. W. H. for current consumed.

Minimum Monthly Bill:

$1.00 per K. W. per month, and in no case shall the minimum bill be less than the charge for sixty (60%) per cent of the highest demand occurring during the previous consecutive twelve (12) month period.

Adjustments of Demand Charge:

(a) Demand charge may be adjusted if, and when, Power Plant deems necessary to correct for power fac-

tors lower than eighty-five (85%) per cent. Such adjustments will be made in such manner as to bring the demand charge to the equivalent of eighty-five (85%) per cent power factor.

SCHEDULE B

GREENWOOD COUNTY MUNICIPAL POWER RATES TO INDUSTRIES AVAILABLE

To industrial power users demands in excess of 10 K. W. Service at primary distribution voltage or secondary distribution voltage at discretion of PURCHASER.

Demand Charge.

$1.15 per K. W. per month.

Demand—Maximum integrated thirty (30) minute period.

(28) Energy Charge.

First 10,000 K. W. H. per month at					11.5	mills	per K. W. H.	
Next 25,000	"	"	"	"	6.9	"	"	"
Next 65,000	"	"	"	"	4.6	"	"	"
Next 400,000	"	"	"	"	3.45	"	"	"
Excess								
Over 500,000	"	"	"	"	2.875	"	"	"

In no case shall the energy charge plus the demand charge aggregate less than 6.5 mills per K. W. H. for current consumed.

Minimum Monthly Bill.

$1.15 per K. W. of Maimum demand, but in no case shall the maximum demand for billing purposes be taken at less than 60% of the Maximum monthly demand billed during the preceding twelve (12) consecutive months period.

SEASONAL LOADS

PURCHASER may in its discretion discontinue service on seasonal loads and establish a minimum payment for idle months sufficient to cover costs involved.

ADJUSTMENT OF DEMAND.

Demand charge may be adjusted if, and when, power plant deems necessary to correct for power factor lower than eighty-five (85%) per cent. Such adjustments will be made in such manner as to bring the demand charge to the equivalent of eighty-five (85%) per cent power factor.

(29) SCHEDULE C

RETAIL RATES TO RURAL CUSTOMERS

Available

To all rural customers:

First 50 kilowatt hours per month @ 3.50c per K.W.H.
Next 150 " " " " @ 2.30c " "

Excess

Over 200 " " " " @ 1.15c " "

Minimum Monthly Bill

5 Ampere Meter	$0.85
15 Ampere Meter	1.15
50 Ampere Meter	1.75

The foregoing rates whenever necessary shall be revised so as to meet the requirements of this resolution and said County hereby covenants and agrees at all times to maintain such rates for services furnished by the system as shall be sufficient to provide for the payment of the interest on and principal of all of said bonds, as and when the same become due and payable, and to create a Bond and Interest Redemption Fund therefor (including a cushion fund to assure the payment of said interest and principal) and to provide for the payment of the expenses of administration and op-

eration and such expenses for maintenance of the system as may be necessary to preserve the same in good repair and working order, and to build up a reserve for depreciation of the system, and to build up a reserve for improvements, betterments and extensions to the system other than those necessary to maintain the same in good repair and working order, as hereinabove provided.

(30) Section 6. Prior to the time when any revenues shall be derived from the system, there shall be designated as custodian of such revenues a bank or trust company duly qualified and doing business within the State of South Carolina, and thereafter all funds derived from the operation of said system, as they are received, and all other funds required to be deposited with said custodian by Section 24 of said Act No. 299 of South Carolina Acts, 1933, shall be deposited with said bank or trust company, as provided in said Act, and there shall be filed with such custodian written instructions complying with said Section 24 of said Act and with Section 4 of this resolution.

Section 7. In the event the County of Greenwood or any department, agency, or instrumentality thereof, shall avail itself of any facilities or services rendered by the system, the reasonable value of the facilities or services of said system shall be collected from said County department, agency or instrumentality monthly as the same accrues. The revenues so received shall be deemed to be revenues derived from the operation of the system and shall be deposited and accounted for in the same manner as other revenues of the system.

Section 8. All moneys received from the sale of any bonds issued pursuant hereto, exclusive of accrued interest, shall be applied solely for the construction of the project as hereir authorized, provided that such proceeds, together with all moneys received as accrued interest, shall be used also to pay the interest on said bonds until the completion of construction.

Section 9. It is covenanted and agreed by the County of Greenwood with the holder, or holders, of the bonds herein authorized to be issued that it will perform all

duties with reference to the system required by the constitution and the statutes of South Carolina, and said County hereby irrevocably covenants, binds and obligates itself not to sell, lease or dispose of said system, including any extensions or additions that may be made thereto, until all the bonds issued hereunder shall be paid in full, both principal and interest, or unless and until provisions shall have been made for the payment of (31) said bonds and the interest thereon in full, and the County further covenants and agrees with the holder or holders, of said bonds to maintain in good condition and to operate said system and to charge and collect such rates and charges for the services rendered by said system, within the limits prescribed by law, so that the income and revenues of the system will be sufficient at all times to meet the requirements as set out in Section 4 hereof.

Section 10. For the further protection of the holders of the bonds herein authorized to be issued and the coupons thereto attached, a statutory lien upon said system is hereby granted and created as provided in Section 8 of said Act No. 299, as amended, which statutory lien is hereby recognized as valid and binding upon the County of Greenwood, and said system, and shall take effect immediately upon the delivery of any bond authorized to be issued under the provisions of this resolution, and any holder of said bonds or any of the coupons may, either in law or in equity, by suit, action, mandamus or other proceedings, protect the statutory mortgage lien hereby conferred, and may by suit, action, mandamus or other proceeding, enforce and compel the performance of all duties required by said act as amended, including the making and collecting of sufficient rates, segregating of the income and revenues and the application thereof.

If there be any default in the payment of principal or interest of any of said bonds, then, upon the institution of suit by any holder of said bonds or of any of the coupons, any court having jurisdiction of the action may appoint a receiver to administer said system on behalf of said County, with the power to charge and collect rates sufficient to provide for the payment of the bonds or obligations outstanding against said system, and for

the payment of the operating expenses and to apply the income and revenues in conformity with this resolution.

Section 11. While any of the bonds herein authorized remain outstanding, the County of Greenwood shall not issue any additional bonds payable from the (32) revenues of said system, unless the lien of such bonds on the revenues of said system is made junior and subordinate in all respects to the lien of the bonds herein authorized.

Section 12. So long as any of said bonds are outstanding the County of Greenwood shall:

(a) Maintain insurance for the benefit of the holders of the bonds herein authorized of a kind and in an amount which usually would be carried by private companies engaged in a similar type of business, and to pay the cost of such insurance from the Operation and Maintenance Fund hereinbefore described.

(b) Keep proper books of records and accounts (separate from all other records and accounts) in which complete and correct entries shall be made of all transactions relating to said system. The County will furnish the original purchaser or purchasers of said bonds and to any holder or holders of any of the said bond, at the written request of such holder or holders, not more than thirty days after the close of each six months' fiscal period, complete operating and income statements of the said system in reasonable detail covering such six months' period, and not more than sixty days after the close of each fiscal year, complete financial statements of the said system in reasonable detail covering such fiscal year certified by independent auditors; and

(c) Grant to any holder or holders of 25 per cent of outstanding bonds or to any purchaser from the original purchaser of the bonds herein authorized, the right at all reasonable times to inspect the said system and all records, accounts and data of the County relating thereto.

Section 13. The officers of said County of Greenwood required by this resolution to execute said bonds are

hereby authorized and directed to execute said bonds, and the said County is authorized and directed to deliver said bonds to the purchaser or purchasers to whom they may be sold from time to time, pursuant to the provisions of said Act No. 299 and Act 1095 as amended, (33) upon receiving the purchase price to be paid by said purchaser or purchasers, and to deposit said purchase price in a special account in a bank to be designated by this body. Said deposit shall be secured in the manner provided by Section 15 of said Act No. 299, as amended.

Section 14. If any section, paragraph, clause or provision of this ordinance shall be held invalid, the invalidity of such section, paragraph, clause or provisions shall not affect any of the remaining provisions of this resolution.

Section 15. All ordinances, resolutions and orders or parts thereof in conflict with the provisions of this resolution are to the extent of such conflict, hereby repealed.

Section 16. This resolution shall take effect immediately upon its passage.

EXHIBIT II.

EXTRACT FROM APPLICATION OF GREENWOOD COUNTY TO THE FEDERAL POWER COMMISSION, FILED SEPTEMBER 13, 1934, FOR A LICENSE FOR SAID BUZZARD ROOST PROJECT.

"A main transmission line of 44,000 volts will be built forming a loop and passing through the County seats of three Counties, namely, Greenwood, Newbury and Laurens. The Counties bear the same names as the County seats. In addition to the County seats the main transmission line will pass through numerous other towns shown on exhibits. Electricity will be supplied to all towns and small industries along the main transmission line, and contracts have been executed with all except Clinton, and this town is expected to sign a contract soon. * * * The proposed use or market for the power to be developed is as follows: Greenwood County holds

contracts with the following consumers for primary power:

(34)

Consumer	Estimated Yearly Consumption K.W.Hrs.	Average Rate	Amount
City of Greenwood	6,000,000	0.0075	$45,000.00
Grenco Oil Mill	750,000	0.01	7,500.00
Town of Ninety-Six	750,000	0.01	7,500.00
City of Newbury	3,000,000	0.0075	22,500.00
Farmers Oil Mill & Ice Plant	1,000,000	0.01	10,000.00
City of Laurens	2,000,000	0.008	16,000.00
Laurens Glass Works	1,200,000	0.009	10,800.00
Rural electrification	500,000	0.02	10,000.00

The following contract is for secondary power:

Grendel Cotton Mills	3,000,000	0.005	15,000.00
		Total,	*$160,300.00

The following is a list of prospective customers in the area:

Consumer	Location	Estimated Consumption K.W.Hrs.
City of Clinton, S. C.		1,200,000
Cotton Mills	at Clinton	17,000,000(secondary)
Cotton Mills	at Goldville	15,000,000
Cotton Mills	at Newbury	20,000,000
City of prosperity		500,000
Cotton Mills	at Greenwood	17,000,000
Cotton Mills	at Ninety-Six	9,000,000(secondary)
City of Abbeville		1,200,000
Cotton Mill	at Abbeville	3,000,000(secondary)
City of Edgefield		1,200,000
Cotton Mill	at Edgefield	3,000,000(secondary)
Cotton Mills	at Laurens	15,000,000
Rural Electric Customers		1,000,000
	Total	104,100,000 K.W.Hrs.

The customers with whom we have contracts will consume aproximately 20 million K.W.Hrs. yearly.

(35) The prospective customers in the area consume 104 million K.W.Hrs. yearly."

*This total is an incorrect addition of the several amounts shown, the correct total being $144,300.00 instead of $160,300.00, as set forth in the application.

STATEMENT AS TO EXHIBIT III

Exhibit III, attached to the Original Bill of Complaint, is a copy of the Opinion of The Supreme Court of the State of South Carolina in the case of Dr. R. H. Park, in his own right as a citizen and taxpayer of the County of Greenwood, and on behalf of other persons similarly situated, vs. Greenwood County, et al.—176 S. E. Rep., 870; 174 S. C. 35.

EXHIBIT IV.

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

IN THE ORIGINAL JURISDICTION.

Dr. R. H. Parke, in his own right as a Citizen and Taxpayer of the County of Greenwood, and in behalf of other persons similarly situated, Plaintiff,

against

Greenwood County, and E. L. Brooks, County Supervisor and member of The Finance Board for Greenwood County, S. A. Agnew, Treasurer of Greenwood County and member of The Finance Board for Greenwood County and E. I. Davis, member of The Finance Board of Greenwood County, Defendants.

(36). COMPLAINT

The Complaint of the above named Plaintiff respectfully shows unto the Court and alleges:

1. That the Plaintiff is a resident of the County of Greenwood, State of South Carolina, and is the owner of real estate therein and is a taxpayer to said County, and that he brings this action in his own behalf and in behalf of all other citizens and taxpayers of the County of Greenwood who are similarly situated and who come in and contribute to the costs and expenses of this action.

2. That the defendant, Greenwood County, is a political subdivision of the State of South Carolina duly created by an Act of the General Assembly of the State of South Carolina, approved the second day of March, 1897.

3. That the defendant, E. L. Brooks, is the duly appointed and qualified supervisor of the County of Greenwood and a member of the Finance Board for Greenwood County; and that the defendant, S. A. Agnew, is the duly appointed and qualfied Treasurer of Greenwood County and a member of the Finance Board for Greenwood County, and that the defendant, E. I. Davis, is the duly appointed and qualified member of the Finance Board for Greenwood County.

4. That the General Assembly of the State of South Carolina, during its regular session of 1931, passed an Act approved the 23rd day of March, 1931 creating the Finance Board for Greenwood County and conferred on said Board power to handle the fiscal and financial affairs of the County of Greenwood, and that The Finance Board of Greenwood County is now the general governing body of the County of Greenwood.

5. That the General Assembly of the State of South Carolina, during its regular session of 1933, passed an Act approved the 8th day of May, 1933 which said Act,

among other things, authorized and empowered any County and other municipalities and political subdivi-
(37) sions therein named, to purchase or construct waterworks, sewerage systems, lighting plants, power plants and distribution system and other projects and facilities named in the Act, are authorized to issue revenue bonds or certificates, the same to be secured by the works or project so authorized, the principal and interest on said revenue bonds or certificates to be paid solely from the revenue derived from the works or projects constructed and in no event shall said bonds or revenue certificates, or any part of the principal or interest thereon, be paid by taxation or any taxpayer, the works or projects and revenue therefrom to be solely liable for the payment of said bonds.

6. That the General Assembly of the State of South Carolina, at its regular session of 1934, passed an Act approved the 12th day of April, 1934, which said Act, among other things, authorized and empowered The Finance Board for Greenwood County to contract with the Public Works Administration, or any other agency or instrumentality of the Government of the United States to borrow funds sufficient for the construction of a hydro-electric plant, the said loan to be secured by revenue bonds or certificates, a copy of said Act is hereto attached and made a part of this complaint.

7. That pursuant to and under the authority of the Acts of the General Assembly of the State of South Carolina, hereinabove referred to, the defendant Greenwood County, by its duly constituted governing Board, The Finance Board for Greenwood County, has entered into negotiations with the Public Works Administration, an agency or instrumentality of the Government of the United States, duly created by Congress of the United States, which said negotiations have resulted in an approval of a loan to the County of Greenwood in the sum of Two Million, Seven Hundred, Sixty-Seven Thousand $2,767,000.00) Dollars, the proceeds of said loan to be used in the building of a hydro-electric plant or project, with accessories, on the Saluda River in the State of South Carolina, at a point on said River known as "Buz-

zard Roost'' together with electric transmission lines in and through Greenwood County and other adjoining counties, and that pursuant to the terms of the approval
(38) and agreement hereinabove referred to, the County of Greenwood is to issue its revenue bonds or certificates in the amount of the loan approved, to-wit, Two Million, Seven Hundred, Sixty-Seven Thousand ($2,767,000.00) Dollars, the principal and interest of said bonds to be secured by revenue from the project and the project itself.

8. That the defendant, County of Greenwood, has already spent and utilized the approximate sum of Fifteen Hundred ($1,500.00) Dollars of money paid to the County of Greenwood by the taxpayers thereof in the furtherance of the project hereinabove named and in the consummation of the agreement heretofore made with the Public Works Administration of the United States, and is now spending and contemplates further spending of said taxpayers funds in the furtherance of the said hydro-electric project.

9. That the plaintiff is informed and believes and alleges that the use and expenditure by the defendants of the monies paid to the defendant by the taxpayers of Greenwood County for any of the purposes hereinabove named and alleged is illegal, ultra vires and in violation of Article VIII, Section 5 of the Constitution of the State of South Carolina, and is also in violation of Article X, Section 6 of the Constitution of the State of South Carolina.

10. That by reason of the foregoing named unlawful and unconstitutional acts of the defendants, the plaintiff as a taxpayer of Greenwood County, and all other persons similarly situated, are suffering and will continue to suffer irreparable damage for which they have no adequate remedy at law, and that the plaintiff is entitled to an Order of this Court restraining and enjoining the County of Greenwood by, or through its governing body, The Finance Board for Greenwood County, from any further commission of the unlawful acts hereinabove alleged.

WHEREFORE, plaintiff prays.

First, That this Court issue its Rule to Show Cause (39) directed to the defendants requiring them to Show Cause before this Court, if any they can, why they should not be restrained and enjoined from the further use or expenditure of monies or credits of the County of Greenwood for the purpose of securing a loan from the Public Works Administration of the United States, or any agency or instrumentality thereof, and that the defendants be restrained and enjoined from the construction and operation of a hydro-electric project, together with accessories and electric power transmission line.

Second, For such other and further relief as to the Court seems just and equitable.

D. A. G. OUZTS,
Attorney for Plaintiff.

State of South Carolina,
County of Greenwood.

PERSONALLY appeared before me Dr. R. H. Park, who being first duly sworn, says: That he has read the foregoing complaint and that each of the allegations therein contained are true of his own knowledge, except those allegations made on information and belief, and that as to those he believes the same to be true.

DR. R. H. PARK.

SWORN to and subscribed before me this the 25 day of September, 1934.

D. A. G. OUZTS, (L. S.)
Notary Public for S. C.

NO. 902

AN ACT TO AMEND AN ACT ENTITLED "AN ACT TO AUTHORIZE ANY COUNTY, TOWNSHIP, CITY OR INCORPORATED TOWN OF THE STATE OF SOUTH CAROLINA TO PURCHASE OR CONSTRUCT A WATERWORKS SYSTEM, ETC.", APPROVED MAY 8, 1933, SO AS TO PROVIDE THE (40) RIGHT TO CONDEMN PROPERTY NECESSARY OR CONVENIENT FOR ANY OF THE PURPOSES MENTIONED IN THE SAID ACT; TO FURTHER DEFINE THE TERM BORROWER; AND TO CONFORM THE PROVISIONS OF THE ACT TO THE PUBLIC WORKS ADMINISTRATION REQUIREMENTS.

SECTION 1: Act 299, 1933 Acts, Amended * * Condemn Necessary property "Borrower" Further Defined —Conform provisions to PWA Requirements. Be it enacted by the General Assembly of the State of South Carolina: That an Act entitled "An Act to Authorize any County, Township, City or Incorporated Town of the State of South Carolina to Purchase or construct a Water Works system, etc.," approved May 8, 1933, and designated as Act No. 299 of the Acts of the General Assembly for the year 1933 be, and the same is hereby amended as follows:

(A-1) Add at the end of Section 1 the following Section to be designated as follows:

SECTION 1-A: This Act shall be construed as cumulative authority for the purposes named in Section 1 hereof, and as to the manner and form of issuing revenue bonds for any such purpose or purposes, and shall not be construed to repeal any existing laws with respect thereto, it being the purpose and intention of this Act to create an additional and alternate method for the purposes herein named.

SECTION 1-B: Every municipality in the State of South Carolina is hereby authorized and empowered to construct, acquire, own, equip, operate, maintain and/or enlarge, extend, or increase any of the works described in Section 1, together with all appurtenances necessary, useful or convenient for the maintenance and operation of such works, and shall have authority to acquire by gift, grant, purchase, condemnation or otherwise all necessary lands, rights-of-way and property therefor within and/or without the corporate limits of such municipality in the county in which it is situate and/or in any adjoining county or counties, and where the condemning municipality is a county the right to (41) condemn shall extend to property within such county and to property in adjoining counties, and to issue revenue certificates to pay the cost of such works and property. No obligation shall be incurred by the municipality in such construction, acquisition, extension or improvement except such as is payable solely from the funds provided under the authority of this Act.

SECTION 1-C: Every such municipality shall have power to condemn any such works to be acquired and any land, rights, easements, franchises and other property, real or personal deemed necessary or convenient for the construction of any such works, for extension, improvements, or additions thereto, and right of condemnation of any such property deemed necessary or convenient shall extend to any such property in the county in which the municipality is situate and/or any adjoining county or counties, and where the condemning municipality is a county the right to condemn shall extend to property within such county and to property in adjoining counties, and in connection therewith, shall have and may exercise all the rights, powers, and privileges, or eminent domain granted to municipalities under the laws relating thereto. Title to property shall be taken in the name of the municipality. Proceedings for such appropriation of property shall be under and pursuant to the general proceedings of law relating to condemnation proceedings in the exercise of the right of eminent domain: PROVIDED, The municipality shall be under no obligation to accept and pay for any property condemned and shall in no event pay for any property condemned or purchased, except from the funds provided

pursuant to this Act; and in any proceedings to condemn, such orders may be made as may be just to the municipality and to the owners of the property to be condemned; and an undertaking or other security may be required securing such owners against any loss or damage which may be sustained by reason of the failure of the municipality to accept and pay for the property, but such undertaking or security shall impose no liability upon the municipality except such as may be paid from the funds provided under the authority of this Act. In the event of the acquisition by purchase the Board may obtain and exercise an option from the own-
(42) . ers of said property for the purchase thereof, and may enter into a contract for the purchase thereof, and such purchase may be made upon such terms and conditions and in such manner as the Board may deem proper: PROVIDED, HOWEVER, That such exercise of option, purchase or contract for such purchase shall in no event bind or obligate such municipality or create any debt, liability or claim except such as may be paid from the funds provided under the authority of this Act. In event of the acquisition of any works already constructed by purchase or condemnation, the Board at or before the time of the adoption of the ordinances or resolution described in Section 6 thereof, shall cause to be determined what repairs, replacements, additions and betterments will be necessary in order that such works may be effective for their purposes, and an estimate of the cost of such improvements shall be included in the estimate of the cost required by Section 6 hereof, and such improvements shall be made upon the acquisition of the works and as a part of the cost thereof.

SECTION 1-D. All sections, provisions, and clauses of this Act, and all prior Acts, which are repugnant to or inconsistent with the provisions of the Public Works Administration Act of the Congress of The United States, are hereby declared void only insofar as the same are in conflict with the Public Works Administration Act, the intention of this Act being to enable the municipality, county, township, city or incorporated town or borrower to qualify for the securing of the loan available from the Public Works Administration of the Federal Gov-

ernment and any other right, privilege or immunity granted by any Act of the Congress of the United States or any Board, Commission, Agency or Instrumentality thereof.

Approved the 12th day of April, 1934.

ACKNOWLEDGMENT OF SERVICE

We the undersigned, constituting the entire membership of The Finance Board for Greenwood County, do each acknowledge due and legal service of copies of the (43) original complaint and Rule to Show Cause in the above entitled action.

WITNESS our hands and seals this 26th day of September, 1934.

E. L. BROOKS (L. S.)
S. A. AGNEW (L. S.)
E. I. DAVIS (L. S.)

In the presence of:

D. A. G. OUZTS
R. F. DAVIS

EXHIBIT V.

RETURN AND ANSWER

The defendants by way of answer to the complainant and Return to the Rule to Show Cause in the above entitled cause, respectfully shows unto the Court and alleges:

1. That they admit the allegations of fact contained in Paragraphs 1, 2, 3, 4, 5, 6 and 8 and so much of Paragraph 7 as alleges therein that the defendants have negotiated and secured the approval of a loan from the

Public Works Administration, an agency or instrumentality of the Government of the United States, for the purposes named in said paragraph, and in reference thereto allege, that under the terms and provisions of the Act of Congress authorizing and permitting the said loan that thirty (30%) per cent of the same is a direct gift to the municipality securing said loan and only seventy (70%) percent of the amount named in said paragraph constitutes a loan, and that the defendants deny the allegations of Paragraphs 9 and 10 of the Complaint.

2. Further answering, the defendants allege that pursuant to the powers conferred by the Acts of the General Assembly of the State of South Carolina, named in the Complaint, and the Acts of the Congress of the United (44) States, they have entered into negotiations with the Public Works Administration, an agency or instrumentality of the Government of the United States, for the granting of a loan to the defendants, County of Greenwood, in the sum of Two Million, Seven Hundred, Sixty-Seven ($2,767,000.00) Dollars, proceeds of said loan to be used exclusively for the construction of a hydro-electric plant, together with accessories and distribution lines, said plant to be located on the Saluda River, State of South Carolina, as alleged in the Complaint, and the said negotiations have resulted in the approval of a loan by the said Public Works Administration in the amount hereinabove alleged, to-wit, Two Million, Seven Hundred, Sixty-Seven ($2,767,000.00) Dollars.

3. That under and pursuant to the Acts of the General Assembly of the State of South Carolina authorizing the defendants to secure a loan from the Public Works Administration of the Government of the United States, for the purposes named in the various Acts referred to in the Complaint and other Acts of the General Assembly of the State of South Carolina, and the Act of the Congress of the United States authorizing said loan, or loans, it is expressly stipulated that counties and other political subdivisions named in the Acts may acquire, construct, extend or enlarge the works or projects named in the Acts and finance the same by the issue of revenue bonds or certificates as the sole and only security for such loan or loans.

4. That the Acts of the General Assembly of the State of South Carolina authorizing the defendants to secure the loan hereinabove referred to, and the Acts of the Congress of the United States in reference thereto, expressly provide that the bonds to be issued by the defendants in financing the work or project named in the Complaint shall be revenue bonds or certificates, the principal and interest of which, or any part thereof, are to be secured solely by the revenue derived from the project and the physical properties of the project itself, and that in no event shall the taxpapers of the County or other subdivisions named in the Act be called upon to pay said bonds, or interest, or any part thereof, and said Act further provides that bonds issued thereunder (45) shall not constitute an indebtedness of such borrower within any State constitutional provisions or statutory limitations.

5. That as a prerequisite to the securing of the loan by the defendants to finance the hydro-electric plant referred to in the Complaint, it was necessary and mandatory to make extensive preliminary surveys and borings and to perform numerous other engineering functions necessary and incident to the determination of the engineering practicability of the project and that the defendants have expended approximately Fifteen Hundred ($1500.00) Dollars for the purposes hereinabove named, however, under the terms and conditions of the Act and Acts authorizing the loan for the aforesaid project, these preliminary expenditures and all other preliminary costs and expenses are refunded to the County of Greenwood, and these defendants deny that plaintiff is sustaining any injury or damage whatsoever by reason of the small expenditures hereinabove stated, preliminary to the granting of said loan in the absence of said expenditures for the purposes herein named, the loan could not be secured.

6. Further answering, the defendants deny the Acts of the General Assembly of the State of South Carolina authorizing the construction and operation by the defendants of the project complained of by the plaintiff, and financed as provided for by said Act is in violation

of Section 5, Articles VIII of the Constitution of the State of South Carolina, in that the revenue bonds or certificates proposed to be issued by the defendants can in no event become the obligations of the County of Greenwood.

7. That the purpose and intention of the construction and operation of the aforementioned hydro-electric plant by the defendants is to generate and to distribute electric current, primarily, direct to municipalities and industries and to promote and encourage rural electrification and to make practicable, by reason of cost to be charged for current, and the extension of transmission lines where the same can be available to small urban and rural communities comprising the greater portion of the (46) population of the Counties of Greenwood, Newbury and Laurens, and that the defendants allege that the use and accessibility to electric power is a modern day necessity affecting the health, morals, happiness and welfare of the citizens and residents of the counties and communities proposed to be served by the erection and operation of the project hereinabove named, and that the same is a proper and legal exercise of the governmental functions of the County of Greenwood and is not a violation of Section 6, Article X of the Constitution of the State of South Carolina, prohibiting the credit of the State, or any political subdivision thereof, to be pledged alone for the benefit of any individual, company, association or corporation.

WHEREFORE, defendants pray that the Rule to Show Cause heretofore issued by this Court be dissolved with costs.

R. F. DAVIS
W. H. NICHOLSON
Attorneys for Defendants.

State of South Carolina,
County of Greenwood.

PERSONALLY appeared before me E. L. Brooks, who being first duly sworn, says: That he is the County

Supervisor for the County of Greenwood and a member of The Finance Board for Greenwood County; that he has read the foregoing Return and Answer and that each of the allegations therein contained are true of his own knowledge, except those allegations made on information and belief, and that as to those he believes the same to be true.

E. L. BROOKS.

SWORN to and subscribed before me this the 26th day of September, 1934.

E. I. DAVIS,
Notary Public for S. C. (L. S.)

(47) ACKNOWLEDGMENT OF SERVICE

Due and legal service of a copy of the answer and Rule to Show Cause in the above entitled action is hereby acknowledged.

Witness my hand and seal this 26th day of September, 1934.

D. A. G. OUZTS,
Attorney for Plaintiff.

EX. VI.

PETITION TO INTERPLEAD

Ex Parte.

Duke Power Company and Southern Public Utilities Company,

In re,

Dr. R. H. Park, in his own right as a Citizen and Taxpayer of the

County of Greenwood, and in behalf of other persons similarly situated, Plaintiff,

vs.

Greenwood County, et al.

To the Honorable, the Supreme Court of South Carolina:

Your petitioners, Duke Power Company and southern Public Utilities Company, by this their petition to interplead in the above entitled action, would respectfully show to the Court:

I.

Duke Power Company is a corporation organized (48) and existing under the laws of the State of New Jersey. It is duly domesticated under the laws of the State of South Carolina, and is duly authorized and licensed to carry on and conduct its business in this State.

II.

Southern Public Utilities is a corporation duly organized and existing under the laws of the State of Maine. It is duly domesticated under the laws of the State of South Carolina, and is duly authorized and licensed to carry on and conduct its business in said State.

III.

On the 26th day of September, 1934, Dr. R. H. Park, as a citizen and taxpayer of Greenwood County on behalf of himself and others similarly situated, commenced within the original jurisdiction of this Court, sitting as a Court of Equity, the above entitled suit for injunctive relief against Greenwood County and the other defendants named as the duly constituted agents and officials of said County. The complaint alleges, in substance, that under and pursuant to authority conferred by certain statutes of the State of South Carolina mentioned in the complaint the defendants had entered into

negotiations with the Public Works Administration, an Agency or instrumentality of the Government of the United States, which said negotiations had resulted in an approval of a loan to the County of Greenwood in the sum of $2,767,000, the proceeds of which were to be used in the building of the hidro electric plant or project with accessories on the Saluda River in the State of South Carolina, at a point known as "Buzzard Roost", together with electric transmission lines in and through Greenwood County and other adjoining Counties, and the pursuant to the terms of such approval and agreement, the County of Greenwood is to issue its revenue bonds in the amount of $2,767,000, to be secured by revenue from the project and by the project itself; that the defendant, Greenwood County, had already spent about the sum of $1,500 of the general funds of Greenwood County in furtherance and promotion of the said project, and contemplates the further expenditure of such funds of said County in furtherance of said hydro electric (49) project; and that, as plaintiff is informed and believes, the use by the defendants of the moneys paid to the County by the taxpayer thereof for any such purposes, is illegal and *ultra vires* and in violation of Article VIII, Section 5, and of Article X, Section 6 of the Constitution of the State of South Carolina.

IV.

On the same day to-wit, the 26th day of September, 1934, the defendants served upon the plaintiff and filed in this Court their return and answer admitting, in substance, the allegations of fact set up in the Complaint, except in so far as it is alleged that all of the amount proposed to be secured from the Public Works Administration would be a loan, in that 30% thereof would be a direct gift to the municipality, and further setting up the authority of certain statutes of the State and of the United States, as alleged in said Answer and Return, and expressly denying that the use and expenditure by the defendants of the moneys paid to the defendant Greenwood County by the taxpayers of Greenwood County for any of the purposes named and alleged, is in contravention of Article VIII, Section 5 and further

denying that the Acts of the General Assembly of South Carolina authorizing the construction and operation by the defendants of the hydro electric project complained of is in violation of Section 5, Article VIII, or of Section 6, Article X, of the Constitution of the State of South Carolina.

V.

The issue or issues of fact and of law so joined by the pleadings in said suit raise the question of the legal validity, in so far as plaintiff's rights as a taxpayer of Greenwood County are involved, of the acts and proposed acts of the defendants set forth in the pleadings under the statutes and constitutional provisions referred to and invoked in the said pleadings.

VI.

In the determination by this Honorable Court of the issues of fact and law thus raised by said pleadings your (50) petitioners are directly interested in the same way and, as they are informed and believe, to a much greater extent, as taxpayers and property owners of Greenwood County, than the plaintiff in the pending suit.

Each of your petitioners owns real and personal property located in Greenwood County, and is a large taxpayer of Greenwood County, and as such directly interested in its fiscal affairs and their administration as a political and taxing subdivision of the State, and each is entitled to all privileges and immunities of citizenship with respect to the protection of its property rights in that regard.

VII.

Your petitioners are further directly interested in the determination of the controversy presented, or sought to be presented, in said suit in that they possess and are now exercising property rights other than those apper-

taining to them as above stated, which rights have been and will be seriously affected and injured by a prosecution and the carrying out of the construction and operation of the said hydro electric project upon which the defendants propose to enter and engage, in that your petitioners are public electric utility corporations and electric lighting and power companies, duly authorized and empowered to carry on the business of generating and supplying electric energy for lighting and power purposes to the public in the State of South Carolina, including Greenwood County and adjoining Counties and various of the cities and towns in said Counties, under valuable franchises granted for that purpose, with which business the construction and operation of the said Greenwood County electrical project will directly and injuriously conflict and compete.

VIII.

Southern Public Utilities Company is the wholly owned subsidiary of Duke Power Company, and together they constitute what is known as Duke Power System. The facilities of said system consist of hydro electric plants supplemented with storage reservoirs and steam station capacity, and of transmission and distribution (51) lines and other equipment which are fully able to serve the public of the territory proposed to be served by the Greenwood County project. The System as it exists today has been built up and *expenaded* over a number of years, starting with a small hydroelectric development upon the Catawba River near Rock Hill, which was placed in operation in 1904. In the building up of this System it has expended many millions of dollars, has given employment to many thousands of the people of this State, has paid tremendous amounts in taxes to the school districts, the towns and cities, the counties, and to the State, and has initiated and fostered numerous manufacturing and industrial enterprises which are now contributing large sums in taxes to the State and its taxing subdivisions and furnishing employment to many thousands of people. The rates and the terms upon which it serves the public are under the control of the Railroad Commission of South Carolina, and both of

your petitioners have duly complied with all the rules and regulations of the said regulatory authority. It is this business of petitioners, thus built and equipped and operated, which defendants, in furtherance of this proposed project, are seeking to take from petitioners, which undertaking, if successful, will result in the taking away from petitioners of a large part, if not the whole, of their business in Greenwood County and certain of the adjoining Counties, by means which, as petitioners are advised and believe, are unlawful.

IX.

Your petitioners are further advised and believe that neither the Complaint nor the Return and Answer in the said suit raise or present all the issues of fact or of law upon which the sound and just judicial determination of the validity of the acts and proceedings of the defendants with respect to said power project depend, in that relevant facts have not been stated and applicable provisions of the State and Federal Statute Law, as well as applicable provisions of the State and Federal Constitutions, have not been invoked, either expressly or impliedly.

X.

The matters of fact and the questions of law which (52) petitioners desire to present and raise are, as petitioners are advised and believe, not only pertinent to the just determination of the said controversy but are essential thereto both from the standpoint of the plaintiff in said suit and of your petitioners as such taxpayers and property owners of Greenwood County and from that of your petitioners as public service companies, engaged in the business of generating and supplying electric energy to the public for lighting and power purposes in the County of Greenwood and adjoining Counties and throughout the Piedmont Section of this State under franchises granted for that purpose.

XI.

To the end that your petitioners may plead such additional facts and raise such additional questions of law your petitioners aver that they are necessary parties, or, if not necessary parties, that they are, in any view, proper parties, to said suit and are entitled to interplead therein by serving and filing their separate Complaint within such reasonable time as the Court may fix.

WHEREFORE, your petitioners pray:

(1) For an Order requiring the parties to the said suit to show cause before this Court on October 8th, at 10:00 A. M. why these petitioners should not be allowed to intervene and plead in said suit.

(2) For an Order permitting petitioners to serve and file their Complaint in the said suit within such reasonable time as may be fixed by the Court.

(3) For such other and further relief as may be just and proper.

(sd) H. J. HAYNSWORTH,
W. R. PERKINS,
W. S. O'B. ROBINSON, JR.,
J. H. MARION,
Attorneys for Petitioners.

(Duly verified)

(53)

EX. VII.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

IN THE ORIGINAL JURISDICTION.

Ex Parte:

Duke Power Company and Southern Public Utilities Company, Petitioners,

In re:

Dr. R. H. Park, in his own right as a Citizen and Taxpayer of the County of Greenwood, and in behalf of other persons similarly situated, Plaintiff,

vs.

Greenwood County, et al, Defendants.

RETURN.

The plaintiff, Dr. R. H. Park, in the above entitled action by way of Return to the Rule to Show Cause heretofore secured by the above named Petitioners respectfully shows:

1. That the Plaintiff is solely interested in the Court determining the constitutional question presented by the original pleadings in this action, which action was brought for the purpose of restraining and enjoining the County of Greenwood through and by its governing body, The Finance Board of Greenwood County, from a further expenditure of county taxpayer's funds in aid and in behalf of the construction of the project named in the complaint.

2. That the plaintiff has no objection to the petitioners, Duke Power Company and Southern Public Utilties Company, intervening in this action, provided their intervention is for the sole purpose of securing an adjudication of the issues raised by the pleadings in this action, and that the plaintiff is opposed to the interven-

(54) tion in this case by the petitioners, Duke Power Company and Southern Public Utilities Company, if it is their intention to inject any issues outside of those raised by the pleadings in this action.

3. The plaintiff is informed and believes that the above named Petitioners seek an intervention in this action for the purpose of having the Court to refer certain issues which are in no wise germane to the determination of the issues raised by the plaintiff, and that to permit the Petitioners to intervene for the purposes stated in their petition would delay indefinitely the determination by this Court of the issues presented by the plaintiff and permit the County of Greenwood to continue for an indefinite time the expenditure of taxpayer's funds in furtherance of the illegal project.

D. A. G. OUTZ,
Attorney for Plaintiff.

(Duly verified)

EX. VIII.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

IN THE ORIGINAL JURISDICTION.

Ex Parte:

Duke Power Company and Southern Public Utilities Company, Petitioners,

In re: RETURN.

Dr. R. H. Park, in his own right as a Citizen and Taxpayer of the County of Greenwood, and in behalf of other Persons Similarly Situated, Plaintiff,

vs.

Greenwood County, et al, Defendants.

(55) The defendants by way of return to the petition to interplead, would respectfully show to this Court:

1. They admit, on information and belief, the allegations of paragraphs 1, 2, 5 and so much of paragraph 3 as alleges the institution of an action in the original jurisdiction of this Court by Dr. R. H. Park on or about the 26th day of September, 1934, but crave reference to the complaint in that action as to its allegations.

2. In answer to the allegations of paragraph 4, these defendants admit that they have filed their return and answer, but crave reference to the return and answer as to the facts therein set out.

3. In answer to the allegations of paragraph 6, these defendants aver that the interest of the intervenors as taxpayers is the same as the interest of the plaintiff, R. H. Park, and admit they are taxpayers of Greenwood County.

4. In answer to the allegations of paragraph 7, these defendants admit, on information and belief, that the intervenors are public electrical utilities corporations operating in the State of South Carolina, and in Greenwood County, but aver, on information, advice and belief, that as prospective competitors of the defendant's Buzzard Roost Project, they have no legal right to participate in this proceeding.

5. In answer to the allegations of paragraph 8, these defendants aver that the allegations thereof are not germane to the issues before the Court; do not constitute reasons for permitting the intervention of the petitioners, or for the granting of injunctive relief against these defendants.

6. In answer to the allegations of paragraph 9, on information, advice and belief, these defendants aver that all proper issues of law and of fact have been raised in the complaint and return heretofore filed in this action.

7. In answer to the allegations of paragraph 10, these defendants reiterate, on information, advice and belief, that all pertinent questions of law and of fact have

(56) been raised by the complaint and the return herein already filed, and that no further questions are suggested in the petition for intervention.

8. In answer to the allegations of paragraph 11 these defendants deny that the proposed intervenors are either necessary or proper parties.

FOR A FURTHER ANSWER AND DEFENSE THESE RESPONDENTS AVER:

9. That for a period of more than twelve months, for the purpose of supplying a strong and increasing demand in the Greenwood section, for power for industrial enterprise and rural electrification, at reasonable cost to the users, they have been working on the development of a hydro electrical plant at Buzzard Roost, to the knowledge of the Duke Power Company and the Southern Public Utilities, both of which corporations have actively, for a period of approximately twelve months, opposed every stage of the development of the Greenwood County Project before the Public Works Administration, the Federal Power Commission and other agencies and instrumentalities. On information, advice and belief, that the proposed intervenors have intended to fight this Project and have fought it at every stage, and have had ample time and opportunity to have asked the intervention of this Court long prior to this time, but have delayed appearing in Court for the purpose of defeating the Project through dilatory tactics, for which reason this Court should not permit the proposed intervention petition to delay the consideration and determination of the questions already raised in the pleadings now before it.

10. By way of further answer, these respondent aver, that it is the policy of the Federal Government to make, through its Public Works Administration, loans and grants for Project such as the Buzzard Roost Project of Greenwood County, not only for the purpose of developing undeveloped resources, but also in order to give immediate employment to a portion of the vast army of unemployed and to furnish cheap electricity and power to industries, municipalities, individuals and farmers.

11. On information, advice and belief, these defend-

(57) ants aver that the Public Works Administration allotment to it for this purpose may be withdrawn at any time by the Government, and that delay in these proceedings seriously jeopardizes the possibility of securing the aforesaid loans and grants. These defendants would further allege, on information, advice and belief, that until the final determination of these proceedings, the Federal Power Commission and the Public Works Administration will not permit the development of defendants' project.

12. By way of further answer, these defendants aver that the Southern Public Utilities and Duke Power Company, as public utilities engaged in the business of generating and selling electrical energy, have no standing in this Court to object to the proposed Buzzard Roost development, merely because such development will furnish competition with them.

WHEREFORE these defendants pray that the motion for intervention be dismissed.

(Signed) ROBINSON AND ROBINSON,
R. F. DAVIS,
W. H. NICHOLSON,
Attorneys for defendants,
Respondents.

Oct. 6th, 1934.

(Duly verified)

EX. IX.

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

IN THE ORIGINAL JURISDICTION.

Ex Parte:

Duke Power Company and Southern Public Utilities Company, Petitioners,

(58) In re:

Dr. R. H. Park, in his own right as a Citizen and Taxpayer of the County of Greenwood, and in behalf of other Persons similarly situated, Plaintiff,

vs.

Greenwood County, et al, Defendants.

ORDER

Per Curiam:

The above named petitioners have filed with this Court a petition asking that they be allowed to interplead in the above entitled action. Upon consideration of the Return of the Defendants to the Rule to Show Cause, heretofore issued by this Court in the matter:

IT IS ORDERED that the petition be refused.

FURTHER ORDERED that the petitioners be allowed, if they so desire, to file an argument in this case upon the issue made by the pleadings.

FURTHER ORDERED that the case be set down for argument on Friday, October 12, 1934.

JOHN G. STABLER,
Senior Associate Justice,
Acting Chief Justice.

Columbia, S. C.,

October 9, 1934.

EXHIBIT X.

(to Original Bill of Complaint)

COPY

(59) THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

IN THE ORIGINAL JURISDICTION.

Dr. R. H. Park, in his own right as a Citizen and Taxpayer of the County of Greenwood, and on behalf of others similarly situated Plaintiff,

against

Greenwood County, and E. L. Brooks, County Supervisor and member of The Finance Board of Greenwood County, S. W. Agnew, Treasurer of Greenwood County and member of The Finance Board for Greenwood County, and E. I. Davis, member of The Finance Board for Greenwood County, Defendants.

It is agreed that the following paragraphs shall be permitted as amendments to the original complaint in the above stated action upon the hearing in this case:

1. That since the institution of this suit in the Supreme Court, the defendant, The Finance Board of Greenwood County, South Carolina, did on the..... day of October, 1934, at a special meeting of said Board, adopt a resolution entitled:

"A RESOLUTION PROVIDING FOR THE ISSUANCE OF TWO MILLION, TWO HUNDRED TWENTY THOUSAND DOLLARS ($2,220,000) REVENUE BONDS OF THE COUNTY OF GREENWOOD,

(60) SOUTH CAROLINA, FOR THE CONSTRUCTION OF A HYDRO-ELECTRIC POWER PLANT IN ACCORDANCE WITH THE PROVISIONS OF ACT 299, ACTS OF SOUTH CAROLINA, 1933, AS AMENDED AND ACT 1095, ACTS OF SOUTH CAROLINA, 1934."

wherein it is resolved that Greenwood County issue $2,220,000. of coupons bonds of said County designated "Hydro-Electric Power Revenue Bonds" for the purpose of providing funds with which to build and construct a hydro-electric plant comprising an earthen dam across Saluda River, a 15,000-KW generating station with necessary control equipment and approximately 90 miles of high and low tension distribution lines, for the purposes of furnishing electric current and power to private individuals, corporations and municipalities within and without the boundary lines of said County for domestic, commercial and industrial use. A full description of the bonds proposed to be issued is set forth in said resolution, together with the provisions for securing and paying said bonds and coupons; the said bonds recite upon their face that they are payable solely and exclusively from the revenue derived from the operation of the said hydro-electric power system, and further recite that they are issued pursuant to Act 299 of the Acts of 1933 of South Carolina, as amended, and Act of 1095 of the Acts of 1934. A true copy of said resolution is hereto attached, marked "Exhibit A" and made a part of this complaint.

2. That the acquisition and construction by the defendants of the hydro-electric plant described in said resolution and authorized to be constructed is an unlawful and illegal exercise of the powers of said County and its governing body and is contrary to and in violation of the Constitution of the State of South Carolina; that the said hydro-electric power plant does not constitute a public county purpose, nor a corporate purpose within the Constitution of said State of South Carolina; that any and all acts of the governing body of said County heretofore or hereafter taken with respect thereto are utterly void and are without authority of either the Constitution or laws of the State of South Carolina.

3. That the bonds authorized by said resolution are void and of no effect for the reason that they are to be (61) issued for the purpose of building and constructing the said hydro-electric power plant which the plaintiff alleges and avers is not a public county purpose, nor a corporate purpose within the meaning of the Constitution of South Carolina, and that said County is totally without authority to either issue the said bonds or construct the improvements mentioned in said resolution.

4. That this plaintiff is informed and believes, and so alleges, that the defendants unless restrained by this Court will proceed to build and construct the said hydro-electric plant authorized by said resolution and to issue the bonds so authorized, all of which is contrary to the Constitution and laws of the State of South Carolina.

5. That by reason of the aforementioned unlawful and unconstitutional acts of the defendants, the plaintiff as a taxpayer of Greenwood County, and all other persons similarly situated, are suffering and will continue to suffer irreparable damage for which they have no adequate remedy at law, and that the plaintiff is entitled to an Order of this Court restraining and enjoining the County of Greenwood by, or through its governing body, The Finance Board for Greenwood County, from constructing the said hydro-electric power plant and from issuing the bonds hereinbefore mentioned, and from any further commission of the unlawful acts hereinabove alleged.

WHEREFORE, the plaintiff prays, in addition to the relief asked for in its original complaint:

FIRST: That this Court issue its Rule to Show Cause directed to the defendants requiring them to Show Cause before this Court, if any they can, Why they should not be restrained and enjoined from entering into or in anywise causing to be constructed the hydro-electric plant hereinbefore in this complaint described, and from issuing or attempting to issue any of the said bonds hereinbefore described.

SECOND: That this Court declare:

(1) That the acquisition or construction of said

(62) hydro-electric power plant by the defendants is for an illegal and unlawful purpose.

(2) That the proposed bonds described in the complaint are invalid and void.

(3) For such other and further relief as to the Court seems just and equitable.

D. A. G. OUZTS,
Attorney for Plaintiff.

R. F. DAVIS &
W. H. NICHOLSON,
Attorneys for Defendants.

SUBPOENA IN EQUITY.

UNITED STATES DISTRICT COURT
.....: DIVISION, WESTERN DISTRICT OF SOUTH CAROLINA

THE PRESIDENT OF THE UNITED STATES OF AMERICA

To Greenwood County and E. L. Brooks, S. A. Agnew and E. I. Davis, as members of and constituting The Finance Board for Greenwood County—GREETING:

YOU ARE HEREBY COMMANDED that all excuses and delays set aside you be and appear within twenty days after the service of this subpoena at the Clerk's office of the United States District Court for the Western District of S. C., at Greenville, S. C. to answer unto the within bill of complaint of Duke Power Company and Southern Public Utilities Company, in said Court exhibited against you. Hereof you are not to fail at your peril, and have you then and there this writ.

WITNESS the Honorable H. H. Watkins, United States District Judge at Greenville, S. C., this 7th day of November A. D. 1934.

W. D. WHITE,
Clerk.
By FRANCES CLEVELAND,
Deputy Clerk.

(63)

MEMORANDUM.

The Defendants in this case are required to file their answer or other defense in the Clerk's office of said Court, on or before the twentieth day after service of this writ, excluding the day thereof; otherwise the Bill may be taken *pro confesso.*

RETURN OF SERVICE OF WRIT.

UNITED STATES OF AMERICA,
Western District of South Carolina, ss:

I hereby certify and return, that on the 7th day of November, 1934, I received the within Subpoena in Equity, and that on the 8th day of November, 1934, I served the same on Greenwood County by leaving a copy of said Subpoena with E. I. Davis, Secretary of the Finance Board of Greenwood County; served E. L. Brooks by leaving a copy with E. I. Davis, Secretary of the Finance Board of Greenwood County; served S. A. Agnew and E. I. Davis by leaving a copy with each of them personally at their offices in Greenwood County.

REUBEN GOSNELL,
United States Marshal.
By G. C. HENDERSON,
Deputy United States Marshal.

Marshal's Fees

Travel . . . . . $....
Service 8.00

$8.00

United States District Court
West. Dist. of So. Car.
NOV. 12 1934
FILED
.....A. M. ..... P. M.
W. D. WHITE, Clerk

(64) GREENWOOD DIVISION

No. Eq. 451

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF SOUTH CAROLINA.

Duke Power Company and Southern Public Utilities Company, Plaintiffs,

vs.

Greenwood County, and E. L. Brooks, S. A. Agnew, et al. etc. Defendants.

SUBPOENA IN EQUITY

Returnable on the ..... day of....., 19....

United States District Court
West. Dist. of So. Car.
NOV. 7 1934
FILED
.....A. M. ..... P. M.
W. D. WHITE, Clerk

H. J. HAYNSWORTH,
W. R. PERKINS,
J. H. MARION,
W S. O'B. ROBINSON, JR.,
Solicitor for Plaintiff.

(65) ORDER MAKING HAROLD L. ICKES AS FEDERAL EMERGENCY ADMINISTRATOR OF PUBLIC WORKS A PARTY DEFENDANT.

United States District Court
West. Dist. of So. Car.
DEC 4 1934
FILED
.....A. M. ..... P. M.
W. D. WHITE, Clerk

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF SOUTH CAROLINA

Duke Power Company and Southern Public Utilities Company, Plaintiffs,

vs. In Equity No. 451

Greenwood County, et al. Defendants.

This cause coming on for hearing on the application of Harold L. Ickes, as Federal Emergency Administrator of Public Works, to be made a party defendant herein, said party appearing by Henry T. Hunt, Special Assistant to the Attorney General of the United States, and it appearing to the court that said Harold L. Ickes as such Administrator has or claims an interest adverse to the plaintiff in this case, and that the presence of said party is necessary or proper to a complete determination of this case:

It is ordered, adjudged and decreed that the said Harold L. Ickes, as Federal Emergency Administrator of Public Works, be, and he is hereby made a party defendant herein and is given to and including December 7, 1934, in which to appear and plead to the bill of complaint filed herein dated November 7, 1934.

H. H. WATKINS,
United States District Judge.

Dec. 4, 1934.

SEPARATE ANSWER OF DEFENDANT HAROLD L. ICKES AS FEDERAL EMERGENCY ADMINISTRATOR OF PUBLIC WORKS.

(66) Filed January 17, 1935.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF SOUTH CAROLINA.

Duke Power Company and Southern Public Utilities Company, Plaintiffs,

vs. In Equity No. 451

Greenwood County, E. L. Brooks, S. A. Agnew, and E. I. Davis, as members of and constituting the Finance Board for Greenwood County, and Harold L. Ickes as Federal Emergency Administrator of Public Works, Defendants.

To the Honorable Henry H. Watkins, Judge of the District Court of the United States for the Western District of South Carolina:

Harold L. Ickes, as Federal Emergency Administrator of Public Works, answering the bill of complaint herein states:

I. Defendant admits that the plaintiff, Duke Power Company, is a corporation organized and existing under the laws of the State of New Jersey, but has no knowledge as to the remaining allegations of paragraph I of the complaint.

II. Defendant admits that the plaintiff, Southern Public Utilities Company, is a corporation organized and existing under the laws of the State of Maine, but has no knowledge as to the remaining allegations of paragraph II of the complaint.

III. Defendant admits the allegations of paragraph III of the complaint.

(67) IV. Defendant admits that this is a suit of a civil nature in equity by citizens of different states and that the value of the matter in controversy in this suit exceeds $3,000, exclusive of interest and costs. Defendant admits that the plaintiffs attempt to invoke the jurisdiction of this Court upon the additional ground that this suit arises under the Constitution and laws of the United States, but denies that the facts in the complaint are sufficient to raise any question under the Constitution and laws of the United States and avers that upon such facts this Court has no judicial power to review or determine the constitutionality of the National Industrial Recovery Act and that the complaint shows upon its face that the plaintiffs have not suffered and are not threatened with suffering any injury sufficient to give them any standing in this Court to question the constitutionality of said Act.

V. Defendant has no knowledge as to the allegations contained in paragraph V of the complaint.

VI. Defendant has no knowledge as to the allegations contained in paragraph VI of the complaint.

VII. Defendant has no knowledge as to the allegations contained in paragraph VII of the complaint.

VIII. Defendant admits that the defendant Greenwood County proposes to construct and operate on the Saluda River in South Carolina, at or near a point known as "Buzzard Roost", a hydro-electric plant with transmission and distribution lines extending into the Counties of Greenwood, Newberry and Laurens, for the purpose of furnishing electric current and power to cities and towns, industries and private individuals in said Counties. Defendant admits that the Finance Board of Greenwood County, on October 6, 1934, adopted a certain resolution, a copy of which is annexed to the complaint as "Exhibit I". Defendant has no knowledge as to the allegations of paragraph VIII of the complaint not herein specifically admitted.

IX. Defendant admits that the defendant Greenwood County has made application to the Federal Power Commission for approval of said hydro-electric project and

(68) has caused an estimate to be made of the cost of constructing said project which estimate amounts to $2,767,000, and that said application estimates that said project will produce annually for sale primary power of approximately 30,000,000 K.W.H. and secondary power of approximately 20,000,000 K.W.H. Defendant admits that said application to the Federal Power Commission contained a schedule of rates as shown by "Exhibit II" annexed to the complaint.

X. Defendant admits that the defendant Greenwood County filed an application with the Federal Emergency Administration of Public Works for a loan and grant in the sum of $2,767,000 to finance the construction of said hydro-electric project. Defendant avers that said application, including plans, specifications, cost estimates, etc. for said project, has been examined by the Engineering Division of the Federal Emergency Administration of Public Works and the total cost of constructing said project together with incidental costs, fees, etc. has been estimated by said Engineering Division to be $2,852,000. Said cost estimate has been approved by this defendant and an allotment of funds in the amount of $2,852,000 (to be available partly as a loan and partly as a grant) has been made for said project pursuant to the provisions of the National Industrial Recovery Act. Defendant avers, upon information and belief, that the total cost of said hydro-electric project as described in said application to the Federal Emergency Administration of Public Works will not exceed the sum of $2,852,000.

XI. Defendant admits that the defendant Greenwood County has entered into a contract, known as a "loan and grant agreement", with the United States of America, a copy of which contract is annexed hereto as "Exhibit A" and made a part of this answer and to which defendant asks reference for the terms thereof. Defendant admits that by said resolution of the Finance Board of Greenwood County adopted October 6, 1934, and in the text of the bonds proposed to be issued pursuant to said resolution the defendant Greenwood County agrees that it will continuously operate said hydro-electric power system and fix and maintain rates for the services furnished by said system sufficient at all times

(69) to provide for the payment of the interest on and principal of such bonds and to provide for operation, maintenance and reserve funds as required by the laws of the State of South Carolina. Except as hereinabove specifically admitted defendant denies each and every allegation contained in paragraph X1. of the complaint.

XII. Defendant has no knowledge as to allegation of paragraph XII of the complaint that the plaintiffs have caused said application of the defendant Greenwood County to the Federal Emergency Administration of Public Works and the plans and estimates accompanying it to be studied by competent engineers. Defendant denies, upon information and belief, each of the remaining allegations contained in paragraph XII of the complaint. Defendant avers that the estimate of the cost of construction of said hydro-electric project as made by the Engineering Division of the Federal Emergency Administration of Public Works has been adopted by the defendant Greenwood County as appears by the above mentioned contract executed by and between said defendant and the United States of America; that the estimates of the cost of said project, maintenance and operation costs and power output, and initial rate schedules, are matters exclusively within the determination of the Finance Board of the defendant Greenwood County as provided by the laws of the State of South Carolina authorizing the construction and financing of said project and such matters are not subject to judicial review by this Court; that the accuracy of such estimates and the probable sufficiency of such initial rate schedules are immaterial to the determination of this cause.

XIII. Defendant admits the allegations of paragraph XIII of the complaint.

XIV. Defendant has no knowledge as to the allegations of paragraph XIV of the complaint.

XV. Defendant denies each and every allegation contained in paragraph XV of the complaint. Defendant avers that the General Assembly of the State of South Carolina has by special Act authorized the construction of this project and has expressly declared said project to be self-liquidating; that by Act No. 1095 of the Acts

(70) of said General Assembly, Regular Session, 1934, the Finance Board of the defendant Greenwood County is authorized and empowered to contract with and borrow from the Federal Emergency Administration of Public Works for the construction of said project; that by Section 2 of said Act

"It is declared that this project is a self-liquidating project and that any indebtedness or obligation created by the said Board shall not be a direct and primary obligation of the County of Greenwood; * * * ."

XVI. Defendant denies, upon information and belief, that the proposed schedule of rates fixed by said resolution of the Finance Board of the defendant Greenwood County and stated in said applications of Greenwood County to the Federal Emergency Administration of Public Works and to the Federal Power Commission are or will be inadequate to meet the requirements of the laws of the State of South Carolina with respect to such rates, and denies that such rates and the fixing thereof do not or will not constitute a compliance with the requirements of said laws as respects said Buzzard Roost project. Defendant further denies that the fixing of said rates, or the issuing of the proposed revenue bonds by the defendant Greenwood County, or the making of contracts by said County on the basis of said rates for power to be produced by said project, are or will be in any way unauthorized or illegal or will constitute illegal competition with the business of the plaintiffs. Defendant avers that the sufficiency of said initial rate schedule fixed by resolution of the Finance Board of the defendant Greenwood County is immaterial to the determination of this cause in that the plaintiffs are in no way injured or aggrieved thereby and in that such rates are subject to revision by the County if they are found to be insufficient.

XVII. Defendant admits that the said hydro-electric project includes the construction of transmission lines outside the limits of Greenwood County and that the defendant Greenwood County proposes to distribute and sell electric current to consumers in the Counties of Newberry and Laurens. Defendant denies that said County has no authority to construct such transmission

(71) lines and to distribute and sell electric current beyond the limits of said County, and denies that the distribution and sale of power beyond the limits of said County will be an illegal or *ultra vires* act on the part of said County or will constitute illegal competition with the plaintiffs. Defendant avers that the defendant Greenwood County has full power and authority under the laws of the State of South Carolina to construct such transmission lines and to sell and distribute electricity outside and beyond the limits of the County.

XVIII. Defendant admits that the said hydro-electric project will be constructed and operated solely within the State of South Carolina and is not intended to engage in interstate commerce. Except as so expressly admitted defendant denies each and every allegation contained in paragraph XVIII of the complaint.

XIX. Defendant admits that the defendant Greenwood County, acting by and through its Finance Board, has entered into a contract with the United States of America, a copy of said contract being annexed to this answer as "Exhibit A" and made a part hereof. Except as so expressly admitted defendant denies each and every allegation contained in paragraph XIX of the complaint.

XX. Defendant denies each and every allegation contained in paragraph XX of the complaint.

XXI. Defendant admits that on or about October 31, 1934, the Supreme Court of the State of South Carolina filed its opinion in the case of Park v. Greenwood County, et al. Defendant asks reference to the pleadings and decision in that cause for the issues raised and decided therein. Defendant admits that the plaintiffs herein filed in that suit a petition praying leave to interplead therein and that by order entered on or about October 9, 1934, the Supreme Court of South Carolina refused said petition to interplead but permitted said petitioners to file argument with said Court upon the issues made by the pleadings; that said petitioners failed and refused to file such argument.

FOR A FIRST SEPARATE AND COMPLETE DEFENSE DEFENDANT ALLEGES:

(72) XXII. That upon the face of the bill of complaint it appears as a matter of law that the facts alleged in said complaint are insufficient to constitute a valid cause of action.

FOR A SECOND SEPARATE AND COMPLETE DEFENSE DEFENDANT ALLEGES:

XXIII. That the decision of the Supreme Court of South Carolina in the case of Park v. Greenwood County, et al, is decisive and binding upon the parties to this suit as to all the issues raised by the bill of complaint herein, and said issues are therefore *res adjudicata.*

FOR A THIRD SEPARATE AND PARTIAL DEFENSE DEFENDANT ALLEGES:

XXIV. That the decision of the Supreme Court of the State of South Carolina in the case of Park v. Greenwood County, et al, is decisive of all the issues raised in the bill of complaint herein as to the construction of the constitution and statutes of the State of South Carolina and as to the power and authority of the defendant Greenwood County to construct and operate the proposed hydro-electric project and to finance such construction and operation by means of the issuance and sale of revenue bonds and the fixing, charging and collecting of rates in the manner proposed and set forth in and by the said resolution of the Finance Board of Greenwood County adopted on or about October 6, 1934; and that said decision upon said issues is binding and conclusive upon this court.

WHEREFORE, this defendant prays judgment that the bill of complaint of the plaintiffs be dismissed.

HENRY T. HUNT,
As Special Assistant to the Attorney General, Attorney for the defendant Harold L. Ickes as Federal Emergency Administrator of Public Works.

Dated, Washington, D. C.
January 14, 1935.

(73)

EX. A.

(To Answer of H. L. Ickes to Original Bill of Complaint)

P. W. 22707

LOAN AND GRANT AGREEMENT

between the

County of Greenwood

South Carolina

and the

UNITED STATES OF AMERICA

P. W. A. Docket No. 3972

PART ONE

1. Purpose of Agreement. Subject to the terms and conditions of this Agreement, the United States of America (herein called the "Government") will, by loan and grant not exceeding in the aggregate the sum of $2,852,000 (herein called the "Allotment") aid the County of Greenwood, South Carolina (herein called the "Borrower") in financing a project (herein called the "Project") consisting substantially of constructing a hydro-electric plant comprising an earthen dam across the Saluda River, a 15,000 K. W. Generating Station with necessary control equipment, transmission lines and rural distribution all pursuant to the Borrower's application (herein called the "Application), P. W. A. Docket No. 3972, Title II of the National Industrial Recovery Act (herein called the "Act") and the Constitution and Statutes of the State of South Carolina (herein called the "State").

2. Amount and Method of Making Loan. The Borrower will sell and the Government will buy, at the principal amount thereof plus accrued interest, $2,284,000 aggregate principal amount of negotiable coupons bonds (herein called the "Bonds") of the description outlined

(74) below or such other description as may be satisfactory to the Borrower and to the Administrator, bearing interest at the rate of 4 per cent per annum, payable semi-annually from date until maturity, less such amount of the Bonds, if any, as the Borrower may sell to purchasers other than the Government.

(a) Date: October 1, 1934. (b) Denomination: $1,000.

(c) Place of Payment: At the office of the Treasurer of the Borrower in the City of Greenwood, South Carolina or, at the option of the holder, at the office of the fiscal agent of the Borrower in the Borough of Manhattan, City and State of New York.

(d) Registration Privileges: Registerable at the option of the holder as to principal only.

(e) Maturities: Payable, without option of prior redemption, on the first day of October in years and amounts as follows:

Year	Amount	Year	Amount
1936	$50,000	1949	$ 95,000
1937	55,000	1950	95,000
1938	60,000	1951	100,000
1939	65,000	1952	105,000
1940	70,000	1953	110,000
1941	70,000	1954	115,000
1942	75,000	1955	115,000
1943	75,000	1956	115,000
1944	75,000	1957	120,000
1945	80,000	1958	125,000
1946	85,000	1959	125,000
1947	90,000	1960	124,000
1948	90,000		

(f) Security: Special obligations of the Borrower, payable solely from and secured by the pledge of, and first lien on a fixed amount of the gross revenues derived from the operation of the entire hydro-electric power generating transmission and distribution system, which fixed amount shall be sufficient at all times to pay the principal of and interest on the Bonds as and when the same become due and payable, and additionally se-

(75) cured by a statutory lien upon the system and any extensions or appurtenances thereto.

3. Amount and Method of Making Grant. The Government will make and the Borrower will accept, (whether or not any or all of the Bonds are sold to purchasers other than the Government,) a grant (herein called the "Grant") in an amount equal to 30 per centum of the cost of the labor and materials employed upon the Project. (The determination by the Federal Emergency Administrator of Public Works (herein called the "Administrator") of the cost of the labor and materials employed upon the Project shall be conclusive. The Government will make part of the Grant by payment of money and the remainder of the Grant by cancellation of Bonds or interest coupons or both. If all of the Bonds are sold to purchasers other than the Government, the Government will make the entire Grant by payment of money.) In no event shall the Grant, whether made partly by payment of money and partly by cancellation, or wholly by payment of money, be in excess of $682,000.

4. Bond Proceedings. When the Agreement has been executed, the Borrower (unless it has already done so) shall promptly take all proceedings necessary for the authorization and issuance of the Bonds.

5. Bond and Grant Requisitions. From time to time after the execution of this Agreement, the Borrower shall file a requisition with the Government requesting the Government to take up and pay for Bonds or to make a payment on account of the Grant. Each requisition shall be accompanied by such documents as may be requested by the Administrator (a requisition together with such documents being herein collectively called a "requisition").

6. Bond Purchases. If a Requisition requesting the Government to take up and pay for Bonds is satisfactory in form and substance to the Adiministrator, the Government, within a reasonable time after the receipt of such Requisition, will take up and pay for Bonds, (having maturities satisfactory to the Administrator, in such amount as will provide, in the judgment of the Administrator, sufficient funds for the construction of the Project

(76) for a reasonable period. Payment for such Bonds shall be made at a Federal Reserve Bank to be designated by the Administrator or at such other place or places as the Administrator may designate, against delivery by the Borrower of such Bonds, having all unmatured interest coupons attached thereto, together with such documents as may be requested by the Administrator. The Government shall be under no obligation to take up and pay for Bonds beyond the amount which in the judgment of the Administrator is needed by the Borrower to complete the Project).

7. Grant by Payment of Money. If a Requisition requesting the Government to make a payment on account of the Grant is satisfactory in form and substance to the Administrator, the Government will pay to the Borrower at such place or places as the Administrator may designate against delivery by the Borrower of its receipt therefor, a sum of money equal to the difference between the aggregate amount previously paid on account of the Grant, and

(a) 25 per centum of the cost of the labor and materials shown in the Requisition to have been employed upon the Project if the Requisition shows that the Project has not been completed, or

(b) 30 per centum of the cost of such labor and materials if the Requisition shows that the Project has been completed and that all costs incurred in connection therewith have been determined;

provided, however, that the part of the Grant made by payment of money to the Borrower shall not be in excess of the difference between the Allotment and the amount paid (not including the amount paid as accrued interest) for the Bonds taken up by the Government. The Government reserves the right to make any part of the Grant by cancellation of Bonds or interest coupons or both rather than by payment of money if, in the judgment of the Administrator, the Borrower does not need the money to pay costs incurred in connection with the construction of the Project.

8. Grant by Cancellation of Bonds. If the Bor-

(77) rower, within a reasonable time after the completion of the Project, shall have filed a Requisition, satisfactory in form and substance to the Administrator, then the Government will cancel such Bonds and interest coupons as may be selected by the Administrator in an aggregate amount equal (as nearly as may be) to the difference between 30 per centum of the cost of the labor and materials employed upon the Project and the part of the Grant made by payment of money. The Government will hold Bonds or interest coupons for such reasonable time in an amount sufficient to permit compliance with provisions of this Paragraph, unless payment of such difference shall have been otherwise provided for by the Government.

9. Grant Advances. At any time after the execution of this Agreement the Government may, upon request of the Borrower, if in the judgment of the Administrator the circumstances so warrant, make advances to the Borrower on account of the Grant, but such advances shall not be in excess of 30 per centum of the cost of the labor and materials to be employed upon the Project, as estimated by the Administrator.

10. Deposit of Bond Proceeds and Grant; Bond Fund; Construction Accounts. The Borrower shall deposit all accrued interest which it receives from the sale of the Bonds at the time of the payment therefor and any payment on account of the Grant which may be made under the provisions of Paragraph 8, PART ONE, hereof, into an interest and bond retirement fund account (herein called the "Bond Fund") promptly upon the receipt of such accrued interest or such payment on account of the Grant. It will deposit the remaining proceeds from the sale of the Bonds (whether such Bonds are sold to the Government or other purchasers) and the part of the Grant made by payment of money under the provisions of Paragraph 7, PART ONE, hereof, promptly upon the receipt of such proceeds or payments in a separtae account or accounts (each of such separate accounts herein called a "Construction Account"), in a bank or banks which are members of the Federal Reserve System and of the Federal Deposit Insurance Corporation and which shall be satisfactory at all times to the Administrator.

(78) 10-(a) Funds from Sale of Timber. Funds received from sale of timber cleared from submerged land shall be paid into the Bond Fund or, into the Construction Account at the election of the Administrator.

11. Disbursement of Monies in Construction Accounts and in Bond Fund. The Borrower shall expend the monies in a Construction Account only for such purposes as shall have been previously specified in Requisitions filed with the Government and as shall have been approved by the Administrator. Any monies remaining unexpended in any Construction Account after the completion of the Project which are not required to meet obligations incurred in connection with the construction of the Project shall either be paid into the Bond Fund, or said monies shall be used for the purchase of such of the Bonds as are then outstanding (at a price not exceeding the principal amount thereof plus accrued interest. Any Bonds so purchased shall be cancelled and no additional Bonds shall be issued in lieu thereof.) The monies in the Bond Fund shall be used solely for the purpose of paying interest on and principal of the Bonds.

12. Other Financial Aid from the Government. If the Borrower shall receive any funds (other than those received under this Agreement) directly or indirectly from the Government, or any agency or instrumentality thereof, to aid in financing the construction of the Project, to the extent that such funds are so received the Grant shall be reduced, and to the extent that such funds so received exceed the part of the Grant which would otherwise be made by payment of money, the aggregate principal amount of Bonds to be purchased by the Government shall be reduced.

13. Construction of Project. Not later than upon the receipt by it of the first Bond payment, the Borrower will commence or cause to be commenced the construction of the Project, and the Borrower will thereafter continue such construction or cause it to be continued to completion with all practicable dispatch, in an efficient and economical manner, at a reasonable cost and in accordance with the provisions of this Agreement, plans, drawings, specifications and construction contracts which

(79) shall be satisfactory to the Administrator, and under such engineering supervision and inspection as the Administrator may require. Except with the written consent of the Administrator, no materials or equipment for the Project shall be purchased by the Borrower subject to any chattel mortgage, or any conditional sale or title retention agreement; provided, that nothing contained in this section shall be construed as imposing a liability of any character upon the general credit and taxing power of Greenwood County.

13. (a) Transmission Line. All transmission lines, wish-bone cross-arms, used by the applicant shall be of welded galvanized steel and not of creosoted timber and, in the event that telephone cables be added to 44 K.B. lines, instantaneous, not inverse, time limit relays shall be used on generator panels.

14. Information. During the construction of the Project the Borrower will furnish to the Government all such information and data as the Administrator may request as to the construction, cost and progress of the work. The Borrower will furnish to the Government and to any purchaser from the Government of 25 per centum of the Bonds, such financial statements and other information and data relating to the Borrower as the Administrator or any such purchaser may at any time reasonable require.

15. Representations and Warranties. The Borrower represents and warrants as follows:

(a) Financial Condition. The character of the assets and the financial condition of the Borrower are as favorable as at the date of the Borrower's most recent financial statement, furnished to the Government as a part of the Application, and there have been no changes in the character of such assets or in such financial condition except such changes as are necessary and incidental to the ordinary and usual conduct of the Borrower's affairs;

(b) Fees and Commissions. It has not and does not intend to pay any bonus, fee or commission in order to secure the loan or grant hereunder;

(80) (c) Affirmation. Every statement contained in this Agreement, in the Application, and in any supplement thereto or amendment thereof, and in any other document submitted to the Government is correct and complete, and no relevant fact materially affecting the Bonds, the security therefor, the Grant or the Project, or the obligations of the Borrower under this Agreement has been omitted therefrom.

16. Bond Circular. The Borrower will furnish all such information in proper form for the preparation of a Bond Circular and will take all such steps as the Government or any purchaser or purchasers from the Government of not less than 25 per centum of the Bonds may reasonably request to aid in the sale by the Government or such purchaser or purchasers of any or all of the Bonds.

17. Expenses. The Government shall be under no obligation to pay any costs, charges or expenses incident to compliance with any of the duties or obligations of the Borrower under this Agreement including, without limiting the generality of the foregoing, the cost of preparing, executing and delivering the Bonds, and any legal, engineering and accounting costs, charges or expenses incurred by the Borrower.

18. Waiver. Any provision of this Agreement may be waived or amended with the consent of the Borrower and the written approval of the Administrator, without the execution of a new or supplemental agreement.

19. Interest of Member of Congress. No Member of or Delegate to the Congress of the United States of America shall be admitted to any share or part of this Agreement, or to any benefit to arise thereupon.

20. Validation. The Borrower hereby covenants that it will institute, prosecute and carry to completion in so far as it may be within the power of the Borrower, any and all acts and things to be performed or done to secure the enactment of legislation or to accomplish such other proceedings, judicial or otherwise, as may be necessary, appropriate or advisable to empower the Bor-

(81) rower to issue the Bonds and to remedy any defects, illegalities and irregularities in the proceedings of the Borrower relative to the issuance of the Bonds and to validate the same after the issuance thereof to the Government, if in the judgment of the Administrator such action may be deemed necessary, appropriate or advisable. The Borrower further covenants that it will procure and furnish to the Government, as a condition precedent to the Government's obligations hereunder a letter from the Governor of the State stating that if in the judgment of the Administrator it may be advisable to enact legislation to empower the Borrower to issue the Bonds or to remedy any defects, illegalities or irregularities in the proceedings of the Borrower relative to the issuance thereof or to validate the same, said Governor will recommend and cooperate in the enactment of such legislation.

21. Naming of Project. The Project shall never be named except with the written consent of the Administrator.

22. Undue Delay by the Borrower. If in the opinion of the Administrator, which shall be conclusive, the Borrower shall delay for an unreasonable time in carrying out any of the duties or obligations to be performed by it under the terms of this Agreement, the Administrator may cancel this Agreement.

23. Conditions Precedent to the Government's Obligations. The Government shall be under no obligation to pay for any of the Bonds or to make any Grant:

(a) Financial Condition and Budget. If, in the judgment of the Administrator, the financial condition of the Borrower shall have changed unfavorably in a material degree from its condition as theretofore represented to the Government, (or the Borrower shall have failed to balance its budget satisfactorily or shall have failed to take action reasonably designed to bring the ordinary current expenditures of the Borrower within the prudently estimated revenues thereof);

(b) Cost of Project. If the Administrator shall not

(82) be satisfied that the Borrower will be able to complete the Project for the sum of $2,852,000, or that the Borrower will be able to obtain, in a manner satisfactory to the Administrator, any additional funds which the Administrator shall estimate to be necessary to complete the Project;

(c) Compliance. If the Administrator shall not be satisfied that the Borrower has complied with all the provisions contained in this Agreement or in the proceedings authorizing the issuance of the Bonds, theretofore to be complied with by the Borrower;

(d) Legal Matters. If the Administrator shall not be satisfied as to all legal matters and proceedings affecting the Bonds, the security therefor or the construction of the Project;

(e) Representations. If any representation made by the Borrower in this Agreement or in the Application or in any supplement thereto or amendment thereof, or in any document submitted to the Government by the Borrower shall be found by the Administrator to be incorrect or incomplete in any material respect;

(f) Maturity of Bonds Sold to Government. If, in the event that some of the Bonds are sold to purchasers other than the Government, the maturities of the remaining Bonds are not satisfactory to the Administrator;

(g) Litigation. If the Administrator shall not be satisfied that all pending litigation or litigations hereafter instituted has been so adjudicated that the validity of the bonds, the security offered, the construction and operation of the project have not been adversely affected.

(h) Licenses. If the Administrator shall not be satisfied that the Borrower has obtained the necessary permit and/or license from the Federal Power Commission and such other permits and licenses as may be necessary to construct and operate the project.

(i) Rate Resolution and Bond Resolution. If the

(83) Borrower shall not have adopted a resolution satisfactory in form and substance to the Administrator, providing for rates to be charged for services afforded by the hydro-electric system, and shall not have adopted a resolution, satisfactory in form and substance to the Administrator, authorizing the issuance of the Bonds.

(j) Specifications and Contracts. If the specifications of materials to be used in the Construction of the Project and the bids and/or contracts entered into between the Borrower and contractors shall not be satisfactory in form and substance to the Administrator.

(k) Contract for sale of electric current. If the Borrower shall not have obtained legal contracts with municipalities, corporations or other consumers for the sale of current and power, which contracts shall be satisfactory to the Administrator as to form, substance and aggregate amount of current to be sold under such contracts, which contracts shall be for a period of at least five years providing for the sale of at least twenty-five million k.w.h. per year of firm power at an average annual rate of not less than 7.6 mills per k.w.h. and for the sale of approximately 5,000,000 k.w.h. per year of secondary power at approximately 5 mills per k.w.h., or the Borrower shall obtain contracts, or submit evidence, satisfactory to the Administrator that the Borrower will sell a sufficient amount of K.W. hours as will in the opinion of the Administrator produce the equivalent total revenues.

24. Special Covenant: Rural Telephone Distribution Lines. In the event that the applicant shall permit the use of the radial rural distribution line for a telephone system, a rate of not less than $1.00 per subscriber per year shall be charged for this service.

PART TWO

IN CONSIDERATION OF THE GRANT, THE BORROWER COVENANTS THAT:

1. Construction Work. All work on the Project shall

(84) be done subject to the rules and regulations adopted by the Administrator to carry out the purposes and control the administration of the Act. The following rules and regulations as set out in Bulletin No. 2, Non-Federal Projects revised March 3, 1934, entitled "P.W.A. REQUIREMENTS as to BIDS, CONTRACTORS' BONDS, AND CONTRACT, WAGE, AND LABOR PROVISIONS AND GENERAL INSTRUCTIONS as to APPLICATIONS AND LOANS AND GRANTS", with all blank spaces filled in as provided in said Bulletin, shall be incorporated verbatim in *ALL CONSTRUCTION CONTRACTS* for work on the Project. (Particular care should be taken that in all such construction contracts *the following words* are inserted in the blank space in Paragraph 3 (a) (1): "County of Greenwood and/or the County of Newberry, and/or the County of Laurens" and *the following words* are inserted in the blank space in Paragraph 3 (a) (2): "State of South Carolina").

"1. (a) Convict labor.—No convict labor shall be employed on the project, and no materials manufactured or produced by convict labor shall be used on the project.

"(b) Thirty-hour week.—Except in executive, administrative, and supervisory positions, so far as practicable and feasible in the judgment of the Government engineer, no individual directly employed on the project shall be permitted to work more than 8 hours in any 1 day nor more than 30 hours in any 1 week: Provided, That this clause shall be construed to permit working time lost because of inclement weather or unavoidable delays in any 1 week to be made up in the succeeding 20 days.

"(c) No work shall be permitted on Sundays or legal holidays except in cases of emergency.

"2. Wages.—(a) All employees directly employed on this work shall be paid just and reasonable wages which shall be compensation sufficient to provide, for the hours of labor as limited, a standard of living in decency and comfort. Such wages shall in no event be less than the minimum hourly wage rates for skilled and

(85) unskilled labor prescribed by the Administrator for the zone or zones in which the work is to be done, viz:

Skilled labor . . . . . .
Unskilled labor . . . . . .

"(b) In the event that the prevailing hourly rates prescribed under collective agreements or understandings between organized labor and employers in effect on April 30, 1933, shall be above the minimum rates specified above, such agreed wage rates shall apply: Provided, That such agreed wages rates shall be effective for the period of this contract, but not to exceed 12 months from the date of the contract.

"(c) The above designated minimum rates are not to be used in diseriminating against assistants, helpers, apprentices, and serving laborers who work and serve skilled journeymen mechanics and who are not to be termed as "unskilled laborers".

"(d) The provisions of this contract relating to hours and minimum wage rates for labor directly employed on the project shall for the purposes of this contract, to the extent applicable, supersede the terms of any code adopted under Title I of the act permitting longer hours or lower minimum wage rates.

"(e) All employees shall be paid in full not less often than once each week and in lawful money of the United States, unless otherwise permitted by the Government engineer, in the full amount accrued to each individual at the time of closing of the pay roll, which shall be at the latest date practicable prior to the date of payment, and there shall be no deductions or rebates on account of goods purchased, rent, or other obligations, but such obligations shall be subject to collection only by legal process: Provided, however, That this clause shall not be construed to prohibit the making of deductions for premiums for compensation and medical aid insurance, in such amounts as are authorized by the laws of South Carolina to be paid by employees, in those cases in which, after the making of the deductions, the wage

(86) rates will not be lower than the minimum wage rates herein established.

"(f) A clearly legible statement of all wage rates to be paid the several classes of labor employed on the work, together with a statement of the deductions therefrom for premiums for workmen's compensation and/or medical aid insurance authorized by the laws of South Carolina, should such deductions be made, shall be posted in a prominent and easily accessible place at the site of the work, and there shall be kept a true and accurate record of the hours worked by and the wages, exclusive of all authorized deductions, paid to each employee, and the engineer inspector shall be furnished with a sworn statement thereof on demand.

"(g) The Board of Labor Review (herein called the "Board") shall hear all labor issues arising under the operation of this contract and such issues as may result from fundamental changes in economic conditions during the life of this contract.

"(h) The minimum wage rates herein established shall be subject to change by the Administrator on recommendation of the Board. In the event that, as a result of fundamental changes in economic conditions, the Administrator, acting on such recommendation, from time to time establishes different minimum wage rates (referred to in paragraph 2 (a), (b), and (c) hereof) all contracts for work on the project shall be adjusted accordingly by the parties thereto so that the contract price to the contractor under any contract or to any subcontractor under any sub-contract shall be increased by an amount equal to any such increased cost, or decreased in an amount equal to such decreased cost.

"(i) Engineers, architects, and other professional and sub-professional employees engaged in duties normally done at the site of the project shall receive at least the prevailing rates for the various types of service to be rendered, provided that in no case shall professional employees receive less than the following weekly compensation for 40 hours or less irrespective of the number of hours employed: $36.00 in the northern zone;

(87) $33.00 in the central zone; and $30.00 in the Southern zone. Where the working week is longer than 40 hours, weekly compensation shall be increased proportionally. Compensation under this paragraph shall be subject to the approval of the Government Engineer.

"3. (a) Labor preferences.—Preference shall be given, where they are qualified, to ex-service men with dependents, and then in the following order: (1) To citizens of the United States and aliens who have declared their intention of becoming citizens, who are bona fide residents of (political subdivision and/or county) . . . . . and (2) to citizens of the United States and aliens who have declared their intention of becoming citizens, who are bona fide residents of (State, Territory, or district) . . . . . : Provided, That these preferences shall apply only where such labor is available and qualified to perform the work to which the employment relates.

"(b) Employment services.—To the fullest extent possible, labor required for the project and appropriate to be secured through employment services shall be chosen from the lists of qualified workers submitted by local employment agencies designated by the United States Employment Service: Provided, however, That union labor, skilled and unskilled, shall not be required to register at such local employment agencies but, if such labor is desired by the employer, shall be secured in the customary ways through recognized union locals. In the event, however, that employers who wish to employ union labor are not furnished with qualified union workers by the union locals which are authorized to furnish such labor residing in the locality within 48 hours (Sundays and holidays excluded) after request is filed by the employer, all labor shall be chosen from lists of qualified workers submitted by local agencies designated by the United States Employment Service. In the selection of workers from lists prepared by such employment agencies and union locals, the labor preferences provided in section (a) of this paragraph 3 shall be observed, and preference shall be given to those unemployed at the date of registration who, at the date of selection, have no other available employment.

(88) "(c) Compliance with Title I of the Act.—The following sections 7 (a) (1) and 7 (a) (2) of Title I of the Act shall be observed:

"(1) That employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraints, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; (2) that no employees and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing.

"4. Human labor.—The maximum of human labor shall be used in lieu of machinery wherever practicable and consistent with sound economy and public advantage; and to the extent that the work may be accomplished at no greater expense by human labor than by the use of machinery, and labor of requisite qualifications is available, such human labor shall be employed.

"5. Compensation insurance.—Every employer of labor shall provide, if permitted by the laws of South Carolina, adequate workmen's compensation insurance for all labor employed by him on the project who may come within the protection of such laws and shall provide, where practicable, employers' general liability insurance for the benefit of his employees not protected by such compensation laws, and proof of such insurance satisfactory to the Government engineer shall be given. Where it is not permitted by law that such insurance be provided, some method satisfactory to the Administrator must be provided by which the employees may, by paying the entire amount of the premiums, derive a similar protection.

"6. Persons entitled to benefits of labor provisions.—There shall be extended to every person who performs the work of a laborer or of a mechanic on the project

(89) or on any part thereof the benefits of the labor and wage provisions of this contract, regardless of any contractual relationship between the employer and such laborer or mechanic. There shall be no discrimination in the selection of labor on the ground of race, creed, or color.

"7. Withholding payment.—Under all construction contracts, Greenwood County may withhold from the (The borrower)
contractor so much of accrued payments as may be necessary to pay to laborers or mechanics employed on the work the difference between the rate of wages required by this contract to be paid to laborers or mechanics on the work and the rate of wages actually paid to such laborers or mechanics.

"8. Accident prevention.—Reasonable precautions shall at all times be exercised for the safety of employees on the work and applicable provisions of the Federal, State, and municipal safety laws and building and construction codes shall be observed. All machinery and equipment and other physical hazards shall be guarded in accordance with the safety provisions of the Manual of Accident Prevention in Construction of the Associated General Contractors of America, unless and to the extent that such provisions are incompatible with Federal, State, or municipal laws or regulations.

"9. N. R. A. Compliance.—The contractor shall comply with each approved code of fair competition to which he is subject, and if he is engaged in any trade or industry for which there is no approved code of fair competition, then as to such trade or industry with an agreement with the President under Section 4 (a) of the National Industrial Recovery Act (President's Reemployment Agreement), and Greenwood County shall have (The borrower)
the right, subject to the approval of the Government engineer, to cancel this contract for failure to comply with this provision and make open market purchases or have the work called for by this contract otherwise performed at the expense of the contractor. So far as articles, materials or supplies produced in the United States are concerned, no articles, materials or supplies shall

(90) be accepted or purchased for the performance of the work nor shall any subcontracts be entered into for any articles, materials or supplies, in whole or in part produced or furnished by any person who shall not have certified that he is complying with and will continue to comply with each code of fair competition which relates to such articles, materials or supplies, and/or in case there is no approved code for the whole or any portion thereof then to that extent with an agreement with the President as aforesaid.

"10. (a) Inspection of records.—The Administrator, through his authorized agents, shall have the right to inspect all work as it progresses, and shall have access to all pay rolls, records of personnel, invoices of materials, and any and all other data relevant to the performance of this contract. There shall be submitted to the Administrator, through his authorized agents, the names and addresses of all personnel and such schedules of the cost of labor, costs and quantities of materials, and other items, supported as to correctness by such evidence, as, and in such form as, the Administrator, through his authorized agents, may require. The submission and approval of said schedules, if required, shall be a condition precedent to the making of any payment under the contract.

"(b) There shall be provided for the use of the engineer inspector such reasonable facilities as he may request. In case of dispute the Government engineer shall determine the reasonableness of the request.

"11. Reports.—Every employer of labor on the project shall report within 5 days after the close of each calendar month, on forms to be furnished by the United States Department of Labor, the number of persons on their respective pay rolls directly connected with the project, the aggregate amounts of such pay rolls, and the man-hours work, wage scales paid to the various classes of labor, and the total expenditures for materials. Two copies of each of such monthly reports are to be furnished to the Government engineer, and one copy of each to the United States Department of Labor. The contractor under any construction contract shall also

(91) furnish to Greenwood County, to the Government
(The borrower)
engineer and to the United States Department of Labor the names and addresses of all subcontractors on the work at the earliest date practicable.

"12. There shall be provided all necessary services and all materials, tools, implements, and appliances required to perform and complete entirely and in a workmanlike manner the work provided for in this contract. Except as otherwise approved in writing by the Government engineer, such services shall be paid for in full at least once a month and such materials, tools, implements and appliances shall be paid for at least once a month to the extent of 90 per cent of the cost thereof to the contractor, and the remaining 10 per cent shall be paid 30 days after the completion of the part of the work in or on which such materials, tools, implements, or appliances are incorporated or used.

"13. Signs.—Signs bearing the legend Public Works Project No. 3972 shall be erected in appropriate places at the site of the project.

"14. All reasonable rules and regulations which the Public Works Administration may prescribe toward the effectuation of the matters covered by paragraphs 1 to 13 inclusive, shall be observed in the performance of the work.

"15. Subcontractors.—(a) Appropriate provisions shall be inserted in all subcontracts relating to this work to insure the fulfillment of all provisions of this contract affecting such subcontractors, particularly paragraphs 1 to 14, inclusive.

"(b) No bid shall be received from any subcontractor who has not signed U. S. Government Form No. P. W. A. 61, revised (March 1934).

"16. Termination for breach.—In the event that any of the provisions of paragraphs 1 to 15, inclusive, of this contract are violated by the contractor under the construction contract or by any subcontractor under any

(92) subcontract on the work, Greenwood County may, (The borrower) subject to the approval of the Government engineer, and upon request of the Administrator, shall terminate the contract by serving written notice upon the contractor of its intention to terminate such contract, and, unless within 10 days after the serving of such notice such violation shall cease, the contract shall, upon the expiration of said 10 days, cease and terminate. In the event of any such termination Greenwood County may take (The borrower) over the work and prosecute the same to completion or otherwise for the account and at the expense of the contractor and/or such subcontractor, and the contractor and his sureties shall be liable to Greenwood County (The borrower) for any excess cost occasioned Greenwood County in the (The borrower) event of any such termination, and Greenwood County (The borrower) may take possesion of and utilize in completing the work, such materials, appliances, and plant as may be on the site of the work, and necessary therefor. This clause shall not be construed to prevent the termination for other causes provided in the construction contract.

"17. Definitions.—The term "Act" as used herein refers to the National Industrial Recovery Act. The term "Government engineer" as used herein shall mean the State engineer (P.W.A.) or his duly authorized representative, or any person designated to perform his duties or functions under this agreement by the Administrator. The term "engineer inspector" as used herein refers to State engineer inspectors, resident and assistant resident engineer inspectors, and supervising engineers, appointed by the Administrator. The term "materials" as used herein includes, in addition to materials incorporated in the project used or to be used in the operation thereof, equipment and other materials used and/or consumed in the performances of the work."

2. Restrictions as to Contractors. The Borrower shall receive no bid from any contractor, nor permit any contractor to receive any bid from any subcontractor,

(93) who has not signed U. S. Government Form No. P. W. A. 61, revised March, 1934.

3. Bonds and Insurance. Construction contracts shall be supported by adequate surety or other bonds or security satisfactory to the Administrator for the protection of the Borrower, or materialmen, and of labor employed on the Project or any part thereof. The contractor under any construction contract shall be required to provide public liability insurance in an amount satisfactory to the Administrator.

4. Force Account. All construction work on the Project shall be done under contract, provided, however, that if prices in the bids are excessive, the Borrower reserves the right, anything in this Agreement to the contrary notwithstanding, to apply to the Administrator for permission to do all or any part of the Project on a force account basis.

This Agreement shall be binding upon the parties hereto when a copy thereof, duly executed by the Borrower and the Government, shall have been received by the Borrower. This agreement shall be governed by and be construed in accordance with the laws of the State. If any provision of this Agreement shall be invalid in whole or in part, to the extent it is not invalid it shall be valid and effective and no such invalidity shall affect, in whole or in part, the validity and effectiveness of any other provision of this Agreement or the rights or obligations of the parties hereto, provided, however, that in the opinion of the Administrator, the Agreement does not then violate the terms of the Act; provided, however, that this Agreement shall not be construed so as to create a debt of Greenwood County or so as to in any manner impose a liability upon the general credit of said County or its taxing powers, it being the intention of this Agreement to provide that the payment of the principal of and interest on the bonds and the maintenance and operation of the hydro-electric system shall be paid solely and exclusively from the revenues derived from the operation of the said system herein described, and that the costs of constructing and completing said

(94) system shall be paid exclusively from the proceeds of the bonds and the Grant herein described.

IN WITNESS WHEREOF, the Borrower and the Government have respectively caused this Agreement, to be duly executed as of December 8, 1934.

Signed and approved

E. L. BROOKS,
County Supervisor.

COUNTY OF GREENWOOD, SOUTH CAROLINA
By: E. L. BROOKS,
County Supervisor.

Signed S. A. AGNEW,
County Treasurer.

(Seal)

ATTEST:

E. I. DAVIS, Secretary
Finance Board for Greenwood County.

UNITED STATES OF AMERICA
By HAROLD L. ICKES,
Federal Emergency Administrator
of Public Works.

ANSWER OF GREENWOOD COUNTY AND E. L. BROOKS, S. A. AGNEW AND E. I. DAVIS, AS MEMBERS OF AND CONSTITUTING THE FINANCE BOARD OF GREENWOOD COUNTY.

Filed January 17, 1935.

(Style of court and Title omitted.)

The defendants, Greenwood County and The Finance Board for Greenwood County, reserving their rights un-

(95) der a motion to dismiss heretofore filed in this cause, answering the complaint herein aver:

1. That they deny each and every allegation in the complaint not hereinafter specifically admitted.

2. They admit on information and belief that Duke Power Company is a corporation of the State of New Jersey, doing business in the State of South Carolina, and that the Southern Public Utilities Company is a corporation of the State of Maine, doing business in the State of South Carolina.

3. They admit that Greenwood County is a body politic and corporate, located in the Western District of South Carolina, and that the individual defendants compose The Finance Board for Greenwood County, and as such are charged with handling the fiscal affairs of the County.

4. They admit that this suit is civil in its nature between citizens of different states, involves more than Three Thousand Dollars, and that the complaint alleges questions arising under the Constitution and laws of the United States.

5. These defendants admit that the plaintiffs, both taxpayers of the State, are known as the Duke System.

6. These defendants admit that the Duke System, as an electrical utility, is subject to regulation by the State, and that it sells electrical energy in Greenwood, Newberry, and Laurens Counties, but avers, on information and belief, that it has no franchise rights in this territory.

7. These defendants admit that the Duke System has invested money in electrical generation, transmission and distribution facilities. They do not have information sufficient to form a belief as to the number of killowatts available for the Duke System, or as to the mileage of its transmission and distribution lines. These defendants aver, on information and belief, that the plaintiffs are serving a negligible percentage of the possible load

(96) in the Buzzard Roost area, and that one of the primary purposes of the defendant's development is to serve large areas not now served, and which probably never will be served by the plaintiffs, who are interested only in serving populous areas.

8. These defendants admit that Greenwood County proposes to construct and operate on the Saluda River a hydro-electric plant near Buzzard Roost, and to furnish electrical energy therefrom in Greenwood, Newberry and Laurens Counties, to cities, industries and private individuals. These defendants admit the adoption of a certain resolution on October 6, 1934, copy of which is attached to the complaint, but aver that the same has been amended by subsequent resolution, a copy of which is attached to this answer and made a part hereof.

9. These defendants admit that the County has made application to the Federal Power Commission for a license, has caused an estimate to be made of the cost of building the Buzzard Roost Project, which estimate amounts to $2,767,000, and admits that its application to the Federal Power Commission estimates Primary Power of 30,000,000 K.W.H., and Secondary Power 20,000,000 K. W. H. These defendants admit that Greenwood County submitted to the Power Commission a schedule of estimated average rates as shown by Exhibit II, attached to the complaint.

10. These defendants admit that Greenwood County has heretofore made application to the Public Works Administration for a loan and grant of $2,767,000.00 to defray the cost of this project, and that a loan and grant of $2,852,000.00 has been approved by the Public Works Administration.

11. These defendants admit that the County has entered into a loan and grant agreement with the United States of America, under date of December 8, 1934, a certified copy of which has heretofore been filed in this Court and furnished to the plaintiffs. This loan and grant agreement is made a part of this answer and incorporated herein by reference. These defendants ask reference to the agreement for its terms. These defend-

(97) ants deny that the loan and grant agreement imposes any obligation on the County to complete this hydro-electric project from its general funds, or by the use of the taxing power of the County.

12. These defendants have no information as to the truth of the allegations that the Duke System has caused plans and estimates to be made of the Buzzard Roost Project, but these defendants deny, on information and belief, that the construction cost of Buzzard Roost Project will be as much as estimated by the Duke Power Company's engineers, as set out in paragraph XII of the complaint, but aver on information and belief, derived from the estimates of the County's engineers, approved by the engineers of the Public Works Administration, of the War Department, of the Electrical Board of Review, and of the Federal Power Commission, that the entire Buzzard Roost project may be built within the amount of the loan and grant. These defendants deny that their plans call for an unsafe dam. They deny, on information and belief, the correctness of the estimates of the operation expenses made by plaintiffs' engineers as to the amount of power to be produced; but aver, on information and belief, that the estimates of the County's engineers, approved by the engineers of the Public Works Administration of the War Department, of the Electrical Board of Review and of the Federal Power Commission are correct, and that the plans of the County's engineers as to safety have been approved by the same engineers.

13. These defendants admit that The Finance Board of Greenwood County represents them in the Buzzard Roost matter.

14. These defendants admit that the Duke System has been serving some of the proposed customers of the Buzzard Roost project.

15. These defendants aver that Greenwood County proposes to construct the Buzzard Roost project out of the proceeds of the loan and grant to be obtained from the Public Works Administration, and that the County proposes to issue for the portion of the construction fund

(98) not represented by the grant, its revenue bonds payable solely out of the revenues from the developed project, in accordance with the terms and conditions of the Revenue Bond Act of May 8, 1933 (XXXVIII Stat. 411) as amended. These defendants aver that the County will not pledge its general credit nor have recourse to its general funds or involve its taxpayers in pecuniary liability in either the construction or operation of the Buzzard Roost project.

16. These defendants ask reference to the provisions of the Revenue Bond Act of May 8, 1933, for its exact terms.

These defendants admit that Greenwood County has filed with the Federal Power Commission a proposed schedule of average rates which it deems sufficient to operate the project, but specifically aver that under the terms of Act No. 299 of the Acts of 1933 and its amendments, these rates are subject to revision by the County if they are found to be insufficient. These defendants, aver however, on information and belief, that the proposed schedule of rates is sufficient to meet the requirements of the Act.

17. These defendants admit that the County proposes to construct transmission lines outside of Greenwood County, but aver that it has full authority to construct such lines outside of the County and to sell and distribute power outside of the territorial jurisdiction of Greenwood County.

18. On information, advice and belief, these defendants deny that under a proper construction of the National Industrial Recovery Act, Sections 202-203, that it is illegal for the Public Works Administration to make this loan and grant of Greenwood County.

These defendants deny on information, advice and belief, that the National Industrial Recovery Act violates the terms of the United States Constitution or its amendments.

These defendants deny, on information, advice and

(99) belief, that the Duke System has a right to complain of the acts of these defendants.

19. These defendants deny, on information, advice and belief, that any obligation of Greenwood County which it has entered into, or which it proposes to enter into, in connection with the development of the Buzzard Roost project, will constitute bonded indebtedness within the meaning of the South Carolina Constitution, Article X, Sections 5 or 6.

20. These defendants deny, on information, advice and belief, that there is any provision in the National Industrial Recovery Act which prevents the Public Works Administration from lending upon revenue bonds and the security provided by Act No. 299 of the South Carolina Acts of 1933.

These defendants deny on information, advice and belief, that any loan made by the Public Works Administration on the revenue bonds proposed to be issued by Greenwood County will be illegal, and deny that the County or its taxpayers will be generally liable therefor.

21. These defendants admit that the South Carolina Supreme Court has filed its opinion in the case of Park v. Greenwood County, 176 S. E. 870, a copy of which is attached to the complaint. These defendants ask reference to the pleadings and decision in that cause for the issues raised and decided therein. These defendants aver on information, advice and belief that the decision of the South Carolina Supreme Court in the Park case is *res adjudicata* as to all issues raised in this action by the Duke System.

22. These defendants deny that there is any equity under the facts as alleged in the Bill of Complaint, or under the actual facts as set out in this answer.

23. These defendants aver that even if the allegations of the complaint as to the cost of this project, as to its operation expenses and as to the amount of power available are correct, electrical energy may still be sold by these defendants at rates substantially less than the

(100) rates now charged by the Duke System, as shown by the schedules filed by them with the South Carolina Railroad Commission.

24. These defendants aver that their estimates of construction cost, of operation expenses and rates have been approved by the Public Works Administration, by the Electrical Board of Review, and by the Federal Power Commission, and that these estimates prepared by these defendants, so approved, are conclusive as to their correctness so far as judicial review is concerned.

25. These defendants aver that they first proposed to sell a large portion of their power output to the Greenwood Cotton Mills, who are now supplied as to power by their own steam plants; that the plaintiffs herein protested to the Public Works Administration against the selling of such a large block of power at the defendants' low rates to the Greenwood Cotton Mills; that these defendants do not now have any tentative contract to sell power to Greenwood Cotton Mills, but have in lieu of that load made tentative arrangements to sell a considerable amount of power to customers who now purchase from the plaintiffs. These defendants aver that this change of load was due, in part, to the plaintiffs' protest.

These defendants aver that the amount of power which they expect to sell to customers who now purchase from the Duke System amounts only to about two per cent. of the plaintiffs' output in this State; and these defendants aver, on information and belief, that but for the protest of the plaintiffs, they would have probably sold to plaintiffs' present customers an amount equivalent to about three-fourths of one per cent. of the plaintiffs' output in this State.

These defendants aver on information, advice and belief, that any injury and damage which might have occurred to the plaintiffs in the loss of customers is due to their own action in protesting against the original plans of these defendants, and the plaintiffs are estopped thereby from complaining herein.

(101) 26. These defendants aver that the loan and grant to these defendants by the Public Works Administration is a part of a comprehensive program authorized by the Federal Constitution, prepared by the President, for the purposes set out in the statutes, and that this comprehensive program necessarily consists of an aggregate of local projects, and that the financing of this aggregate of local projects as a part of the comprehensive program will provide for the general welfare of these United States.

WHEREFORE having fully answered these defendants ask that this complaint be dismissed.

W. H. NICHOLSON,
R. F. DAVIS,
ROBINSON & ROBINSON,
Attorneys for Greenwood County and The Finance Board of Greenwood County.

January 11th, 1935.

State of South Carolina,
County of Greenwood.

E. L. BROOKS being first duly sworn, says: That he is one of the defendants in the above entitled action; that he has read the foregoing answer, and the same is true of his own knowledge, except as to matters therein stated on information and belief, and those he believes to be true.

E. L. BROOKS.

Sworn to before me this 11th day of January, 1935.

CAMELIA C. MILLER,
Notary Public for S. C. (L. S.)

(102) EXHIBIT ATTACHED TO AND MADE A PART OF THE ORIGINAL ANSWER OF GREENWOOD COUNTY AND ITS FINANCE BOARD FILED JAN. 17, 1935.

A RESOLUTION TO AMEND A RESOLUTION ENTITLED "A RESOLUTION PROVIDING FOR THE ISSUANCE OF TWO MILLION, TWO HUNDRED TWENTY THOUSAND DOLLARS ($2,220,000) REVENUE BONDS OF THE COUNTY OF GREENWOOD, SOUTH CAROLINA, AND FOR THE CONSTRUCTION OF THE HYDRO-ELECTRIC POWER PLANT IN ACCORDANCE WITH THE PROVISIONS OF ACT 299, ACTS OF SOUTH CAROLINA, 1933, AS AMENDED, AND ACT 1095, ACTS OF SOUTH CAROLINA, 1934".

WHEREAS, the Finance Board of Greenwood County, South Carolina, by resolution duly adopted on the ..... day of ....., A. D., 1934, which resolution is duly spread on the minute book of this Board, at page ....., which resolution is entitled "A resolution providing for the issuance of two million, two hundred twenty thousand dollars ($2,200,000) revenue bonds of the County of Greenwood, South Carolina, and for the construction of the hydro-electric power plant in accordance with the provisions of Act 299, Acts of South Carolina, 1933, as amended, and Act 1095, Acts of South Carolina, 1934"; and

WHEREAS the Finance Board of Greenwood County, South Carolina, desires to make certain amendments to said resolution;

NOW, THEREFORE BE IT RESOLVED BY THE FINANCE BOARD OF GREENWOOD COUNTY, SOUTH CAROLINA, AS FOLLOWS:

That the resolution heretofore adopted on the ..... day of ....., 1934, and entitled as above set forth, be and the same is hereby amended as follows:

Section 1. By striking out the form of the bonds and coupons set forth in Section 3 of said resolution and by inserting in lieu thereof the following:

(103) "No. $1,000.00

UNITED STATES OF AMERICA
STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD

HYDRO-ELECTRIC POWER REVENUE BOND

The County of Greenwood, State of South Carolina hereby acknowledges itself indebted and for value received promises to pay to the bearer, or if this bond be registered, to the registered holder hereof from the revenue hereinafter described and only therefrom the sum of

ONE THOUSAND DOLLARS ($1,000)

on the first day of October, 19...., and to pay interest on said sum from the date hereof until paid, at the rate of four per cent (4%) per annum, payable semi-annually on the first days of April and October, in each year, upon presentation and surrender of the annexed interest coupons as the same severally mature, both principal and interest being payable in lawful money of the United States of America, at the office of the County Treasurer of Greenwood County, in the City of Greenwood, South Carolina, or, at the option of the holder at the Guaranty Trust Co., in the Borough of Manhattan, City and State of New York.

This bond is one of a series of bonds of like date and tenor except as to maturity, and is issued pursuant to Act No. 299, of the Acts of 1933 of South Carolina, as amended, Act 1095, Acts of 1934 of South Carolina and a resolution duly adopted by the Finance Board of Greenwood County on the 6th day of October, 1934, as amended, for the purpose of defraying the cost of a hydro-electric power system of said County described in said resolution.

Both principal of and interest on this bond are payable solely from a first lien on and pledge of a fixed amount of the gross revenues derived from the operation of the hydro-electric power system of said County as

(104) subsequently improved and extended which amount shall be sufficient at all times to pay the principal of and interest on the bonds when the same shall become due and payable. Neither this bond nor any of the interest coupons hereto attached constitute an indebtedness of said County of Greenwood, within the meaning of any constitutional provision or statutory limitation.

Said County hereby agrees that it will continuously operate said hydro-electric power system and fix and maintain rates for the services furnished by said system as shall be sufficient at all times to provide for the payment of the interest on and principal of this bond and the issue of which it forms a part as and when the same becomes due and payable, to create a "Bond and Interest Redemption Fund" therefor, to provide for the payment of the expenses of the administration and operation and such expenses for maintenance of said system as may be necessary to preserve the same in good repair and working order, to build up a reserve for depreciation of said system and to build up a reserve for improvements, betterments and extensions to said system other than those necessary to maintain the same in good repair and working order; provided that such costs of operating and maintaining the said system shall be payable solely from revenues derived from the operation of the hydro-electric power system.

Under authority of said Act, as amended, and by the resolution authorizing the issuance of this bond, there has been created and granted to and in favor of the holder or holders of this bond and the issue of which it forms a part and to and in favor of the holder or holders of the coupons attached to said bonds a statutory lien, which is hereby recognized as valid and binding on said hydro-electric power system, with the appurtenances and extensions thereto, and said system shall remain subject to said statutory lien until the payment in full of the interest on and the principal of this bond and the issue of which it forms a part.

This bond may be registered as to principal only in the name of the holder on the books of said County in the office of its Treasurer, such registration being noted hereon by the County Treasurer, after which no transfer

(195) shall be valid unless made on said books and similarly noted on the bond, but it may be discharged from such registration by being transferred to bearer, after which it shall be transferable by delivery, but it may be again registered as before. The registration of this bond as to principal shall not restrain the negotiability of the coupons by delivery merely.

The principal of and interest of this bond are exempt from any and all state, county and municipal and other taxation whatsoever under the laws of the State of South Carolina.

It is hereby certified and recited, that all conditions, acts and things required by the constitution or statutes of the State of South Carolina to exist, be performed, and happen precedent to or in the issuance of this bond exist, have been performed and have happened.

IN WITNESS WHEREOF, said County of Greenwood in the State of South Carolina has caused this bond to be signed by its County Supervisor, and the County Treasurer and its corporate seal to be impressed thereon, and countersigned and approved by the County Supervisor and the annexed coupons to be authenticated by the facsimile signature of said County Treasurer and this bond to be dated the first day of October, 1934.

.....
County Supervisor.

.....
County Treasurer.

Countersigned and approved:

.....
County Supervisor.

(FORM OF COUPON)

No. $20.00

On the .... day of ....., 19.., the County of

(106) Greenwood, South Carolina, will pay to the bearer Twenty Dollars ($20.00) at the office of the County Treasurer, Greenwood County, in the City of Greenwood, South Carolina, or at the option of the holder, at the Guaranty Trust Co. in the Borough of Manhattan, City and State of New York from the revenue derived from the operation of the hydro-electric power system described in, and being the semi-annual interest then due on its hydro-electric power revenue bond numbered ....., dated October 1, 1934. This coupon is issued under Act No. 299 of the Acts of 1933 of South Carolina, as amended, Act 1095, Acts of 1934 of South Carolina, and does not constitute an indebtedness of said County within any state constitutional provision or statutory limitation.

.....
County Treasurer.

Section 2. By striking out of said resolution all of the last paragraph of Section 5, and inserting in lieu thereof the following to be known as the last paragraph of Section 5:

"The foregoing rates whenever necessary shall be revised so as to meet the requirements of this resolution and said County hereby covenants and agrees at all times to maintain such rates for services furnished by the system as shall be sufficient to provide for the payment of the interest on and principal of all of said bonds, as and when the same become due and payable, and to create a Bond and Interest Redemption Fund therefor (including a cushion fund to assure the payment of said interest and principal) and to provide for the payment of the expenses of administration and operation and such expenses for maintenance of the system as may be necessary to preserve the same in good repair and working order, and to build up a reserve for depreciation of the system, and to build up a reserve for improvements, betterments and extensions to the system other than those necessary to maintain the same in good repair and working order, as hereinabove provided; provided that the expenses incurred in performing the things authorized in this section shall be payable solely from revenues derived from the operation of the hydro-electric

(107) power system and shall not constitute an indebtedness or obligation of Greenwood County for which the faith and credit of the County may be pledged or taxes levied for the payment thereof";

Section 3. By striking out of said resolution all of Section 9, and inserting in lieu thereof the following to be known as Section 9:

"Section 9. It is covenanted and agreed by the County of Greenwood with the holder, or holders, of the bonds herein authorized to be issued that it will perform all duties with reference to the system required by the constitution and the statutes of South Carolina, and said County hereby irrevocably covenants, binds and obligates itself not to sell, lease or dispose of said system, including any extensions or additions that may be made thereto, until all the bonds issued hereunder shall be paid in full, both principal and interest, or unless and until provisions shall have been made for the payment of said bonds and the interest thereon in full, and the County further covenants and agrees with the holder, or holders, of said bonds to maintain in good condition and to operate said system and to charge and collect such rates and charges for the services rendered by said system, within the limits prescribed by law, so that the income and revenues of the system will be sufficient at all times to meet the requirements as set out in Section 4 hereof; provided that the expenses incurred in performing the things authorized in this section shall be payable solely from revenues derived from the operation of the hydro-electric power system and shall not constitute an indebtedness or obligation of Greenwood County for which the faith and credit of the County may be pledged or taxes levied for the payment thereof."

Section 4: By striking out of said resolution all of paragraph 1 of Section 10 and inserting in lieu thereof the following to be known as Paragraph 1, Section 10:

"For the further protection of the holders of the bonds herein authorized to be issued and the coupons thereto attached, a statutory lien upon said system is hereby granted and created as provided in Section 8 of said Act No. 299, as amended, which statutory lien is

(108) hereby recognized as valid and binding upon said system, and shall take effect immediately upon the delivery of any bond authorized to be issued under the provisions of this resolution, and any holder of said bonds or any of the coupons may, either in law or in equity, by suit, action, mandamus or other proceedings, protect the statutory lien hereby conferred, and may by suit, action, mandamus or other proceedings, enforce and compel the performance of all duties required by said act as amended, including the making and collecting of sufficient rates, segregating of the income and revenues and the application thereof";

Section 5. By striking out of said resolution all of Sections 14, 15 and 16 and inserting in lieu thereof the following sections to be known as Sections 14, 15, 16 and 17 of said resolution: —

"Section 14. That none of the acts, conditions or covenants or things authorized to be done, kept or performed in this resolution or any section herein, shall be construed as authorizing Greenwood County to create a debt or incur any liability which would in any manner impose a charge against the general credit of said County or its taxing powers, it being the intention of this resolution to provide that the payment of the principal of and interest on the bonds herein authorized and the maintenance and operation of the hydro-electric system shall be paid solely and exclusively from the revenues derived from the operation of said system herein described and that the cost of constructing and completing said system shall be paid exclusively from the proceeds of the bonds herein described, and from the Grant made by the Government";

"Section 15. If any section, paragraph, clause or provisions of this resolution shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this resolution";

"Section 16. All ordinances, resolutions and orders or parts thereof in conflict with the provisions of this resolution are to the extent of such conflict, hereby repealed";

(109) "Section 17. This resolution shall take effect immediately upon its passage."

Section 6. That the above resolution shall remain in full force and effect in all other respects except as herein amended.

AMENDED AND SUPPLEMENTAL BILL OF COMPLAINT.

Filed February 4, 1935.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF SOUTH CAROLINA.

Duke Power Company and Southern Public Utilities Company, Plaintiffs,

vs.

Greenwood County, E. L. Brooks, S. A. Agnew, and E. I. Davis, as members of and constituting the Finance Board for Greenwood County, and Harold L. Ickes as Federal Emergency Administrator of Public Works, Defendants.

The plaintiffs, leave having been granted them by this Honorable Court, file this supplement and amendment to their original bill of complaint, and allege:

I.

Since the institution of this suit Harold L. Ickes, as Federal Emergency Administrator of Public Works, on his own application filed herein on December 3, 1934, and by order duly made and entered herein December 4, 1934, has become a party defendant to this suit, and has filed an answer to the original bill of complaint, said answer having been filed with the Clerk of this Court on January 17, 1935.

(110)

II.

After the institution of this suit said Administrator revised and changed said agreement, and caused the resolution providing for the issuance of said bonds to be revised and changed by the Finance Board for Greenwood County, a copy of the revised agreement as executed being attached to the answer of said Administrator marked Exhibit "A", and a copy of the revised resolution adopted by said Finance Board, under which it now proposes to issue bonds to the United States of America, being attached to and made a part of the answer of the defendant Greenwood County, and the members of its Finance Board.

III.

The plaintiffs are informed, advised and believe, and therefore allege and charge, that the use and appropriation of federal funds for the construction of said Buzzard Roost project as proposed and provided for in said revised agreement (Exhibit "A" to the Answer of Administrator Ickes), will be in violation of the provisions of the National Industrial Recovery Act, even if said Act could be interpreted and construed as authorizing under any circumstances or conditions, and upon any terms the use of federal funds for such purpose, and will be in violation of the rules and regulations prescribed by the President to carry out the purposes of Title II of said Act, to which rules and regulations as set forth in Circular No. 1, issued by the Federal Emergency Administration of Public Works, July 31, 1933, reference is hereby made, for the reasons and in the respects set forth in the original bill of complaint, as well as for that (a) the bonds to be issued to the United States under said revised resolution pursuant to said revised agreement will not be legally enforceable, and will not be sufficient to reimburse the United States for its outlay (less the grant of 30 per centum of the cost of the labor and material employed upon said project), for the construction of said project, and, in view of the facts hereinbefore alleged in the original bill of complaint as to the cost of constructing said project, its power output, its revenues and operating expenses, the United

(111) States will have no security whatsoever for the repayment of said outlay in excess of said grant; (b) under said revised agreement Greenwood County does not obligate itself to complete said project, or to maintain and operate the same if it should be completed; (c) as heretofore alleged in the original bill of complaint said project cannot be constructed for the amount of said federal funds, and if constructed will not be self-supporting, and Greenwood County has no other funds available to it which it can lawfully use for the construction of said project, or for the maintenance and operation thereof if the same should be constructed; (d) said Buzzard Roost project is not a part of and has no relation to any comprehensive program of public works, or coordinated plan designed and intended to promote the general welfare of the United States or to carry out the policy of Congress as declared in said National Industrial Recovery Act; and (e) the use and appropriation of federal funds for the construction of said project will not promote the general welfare of the United States, or carry out the policy of Congress as declared in said Act, and is not authorized by said Act.

IV.

The plaintiffs are informed, advised and believe, and therefore allege:

(1) That the National Industrial Recovery Act does not purport to confer on the Administrator, the Federal Emergency Administration of Public Works, the President, or any other officer or agency designated to act for the President or charged with the administration of said Act, uncontrolled and unlimited legislative power to make appropriations of federal funds to such objects and for such purposes as any such officer or agency may deem to be in the interest or for the general welfare; that if said National Industrial Recovery Act should be interpreted and construed as authorizing the use of federal funds for the construction of said Buzzard Roost project under any circumstances or conditions there has, in this case, been no finding by the Administrator, the Federal Emergency Administration of Public Works, the President, or by any other officer or agency designated to act for the President or charged with the administration of said Act that the proposed appropriation will

(112) comply with the terms of said Act by increasing employment quickly, that the part of said appropriation designated as a loan will be reasonably secured within the terms of said Act, or that said appropriation will otherwise carry out or promote the policy of Congress as declared in said Act; that the rules and regulations prescribed by the President to carry out the purposes of Title II of said Act, as contained in Circular No. 1 hereinbefore referred to, prescribe among the tests for the eligibility of a project that it shall be sound from an engineering and technical standpoint, that the applicant for a loan and grant of federal funds shall have financial ability to complete the project and to reasonably secure any loan made by the United States; and that the securities to be purchased by the United States shall be legally enforceable; and further prescribe that no grant will be allowed unless the applicant enters into a contract to complete the project; that it was the purpose of this circular to require an investigation of these questions and a favorable finding on them as a condition of the eligibilty of a project for a loan and grant of federal funds, and plaintiffs charge that no such findings have been made in favor of said Buzzard Roost project, and that in fact said project is not sound from and engineering and technical standpoint, that the County is not financially able to complete said project, that it cannot secure the socalled loan proposed to be made by the United States, that the securities proposed to be purchased by the United States will not be legally enforceable as against the County, and that the agreement executed between the County and the Administrator on behalf of the United States (Exhibit "A" of the answer of the Administrator) undertakes to relieve the County from any obligation to complete said project or to maintain and operate the same if it should be completed; and that therefore the appropriation of federal funds to Greenwood County for the construction of said Buzzard Roost project as proposed and provided for by said agreement (Exhibit "A" of the answer of the Administrator or) is unauthorized and illegal.

(2) That if said National Industrial Recovery Act purports to authorize the use and appropriation of federal funds proposed to be made in this case for the construction of said Buzzard Roost project, said Act con-

(113) stitutes an unlawful delegation of the legislative power of Congress, in violation of Article I, Sec. 1, and Sec. 8, Paragraph 18, of the U. S. Constitution.

V.

As heretofore alleged in the original bill of complaint plaintiffs are electrical public utility corporations engaged in the intrastate sale and distribution of electric power and energy within the State of South Carolina; their business and their rates for such sales are subject to the exclusive jurisdiction, regulation and control of the Railroad Commission of said State; they have invested many millions of dollars in electric power facilities for serving the territory in question, and are adequately serving said territory; and their rates are just and reasonable and have been duly approved by said Railroad Commission.

VI.

Plaintiffs are informed, advised and believe, and therefore allege and charge:

(1) That the effect of said appropriation of federal funds for the construction of said Buzzard Roost project is to regulate and control the intrastate rates of these plaintiffs for the sale and distribution of electric power within the State of South Carolina; that in order to bring about said effect the Administrator, unless restrained by this Honorable Court, intends by the use of said federal funds to construct, or cause to be constructed, under his direction and supervision said Buzzard Roost project, so that the rates to be charged for power which would be produced by said project shall be used as a standard or yardstick to measure and limit and to force a reduction of the rates of these plaintiffs; that also in order to bring about said effect the defendants Greenwood County and the members of its Finance Board, have fixed the rates stated in Exhibits "I" and "II" to the original bill of complaint for the sale of power produced by said project notwithstanding the fact, as heretofore alleged in the original bill of complaint, that at said rates said project will not be self-liquidating and self-supporting; that as showing the effect of said appropriation of

(114) federal funds plaintiffs attach hereto as Exhibit "XII" and make a part hereof, Release No. 989, issued by the Federal Emergency Administration of Public Works on or about September 27, 1934; that the appropriation of federal funds for said purpose is not authorized by the National Industrial Recovery Act, and if said Act should be interpreted and construed as authorizing said appropriation of federal funds for said purpose it is in violation of the 10th Amendment of the U. S. Constitution.

(2) That said Buzzard Roost project could not be constructed and operated in competition with these plaintiffs so as to deprive them of their customers and business but for said unauthorized and illegal use of federal funds, and the injury which the plaintiffs will sustain to their property and business, if said project is constructed as proposed by defendants, will be directly caused and brought about by such unauthorized and illegal use of federal funds.

(3) That the proposed appropriation of federal funds to Greenwood County under the terms of said revised agreement (Exhibit "A" to the answer of the Administrator"), as hereinbefore alleged, would, for the reasons hereinbefore alleged and alleged in the original bill of complaint, be illegal, and would render the defendant Greenwood County and its taxpayers liable to the Federal Government for the repayment of said funds, with legal interest thereon, at such time as the Federal Government should elect to require the repayment of said funds, irrespective of the maturity or maturities of the bonds proposed to be issued under said amended resolution of the Finance Board of said County and the receipt and acceptance of said County of said federal funds would create a general liability upon said County and its taxpayers, and constitute an indebtedness against said County, which together with the existing bonded indebtedness of said County would amount to more indebtedness in the aggregate than 8 per centum of the value of all taxable property within said County as valued for state taxation, and would therefore be contrary to and in violation of Article X, Secs. 5 and 6, of the Constitution of South Carolina.

(115) WHEREFORE the plaintiffs having filed the foregoing as a supplement and amendment to their original bill of complaint, renew their prayer for relief as set forth in said original bill of complaint, and do further pray that said relief be granted against the defendant Harold L. Ickes, as Federal Emergency Administrator of Public Works, as well as against the original defendants.

H. J. HAYNSWORTH,
W. R. PERKINS,
J. H. MARION,
W. S. O'B. ROBINSON, JR.,
Attorneys for Plaintiffs.

MOTION TO DISMISS.

Filed February 23, 1935.

(Style of Court and Title omitted.)

The Defendants Greenwood County, E. L. Brooks, S. A. Agnew and E. I. Davis, as members of and constituting the Finance Board of Greenwood County, will move the Court at 11:00 o'clock A. M., on the 2nd day of March, 1935, at Chambers, in Anderson, S. C., or as soon thereafter as counsel can be heard, to dismiss the bill of complaint as amended and supplemented under order of the 2nd day of February, 1935, upon the following grounds:

1. Because it appears in the bill of complaint as amended and supplemented that a proceeding entitled R. H. Park, in his own right and as a citizen and taxpayer of Greenwood County, and in behalf of other persons similarly situated v. Greenwood County, et al., has heretofore been instituted in the original jurisdiction of the South Carolina Supreme Court, and has been decided against the taxpayer in that action, therefore the questions attempted to be raised by the plaintiffs in this action are *res adjudicata*.

2. In that the complaint as amended and supple-

(116) mented shows upon its face that there is an insufficiency of fact to constitute a valid cause of action in equity against these defendants.

3. In that the complaint as amended and supplemented shows upon its face that the plaintiffs have no standing in Court to question the action of the defendants in the particulars set out in the bill and in the supplemental bill.

W. H. NICHOLSON,
R. F. DAVIS,
ROBINSON & ROBINSON,
Attorneys for Greenwood County and its Finance Board.

February 19, 1935.

MOTION TO DISMISS.

Filed April 9, 1935.

(Style of Court and Title omitted.)

Now comes Harold L. Ickes, as Federal Emergency Administrator of Public Works, joined as defendant herein by order of the Court dated December 4, 1934, and moves the court to dismiss the Bill of Complaint as amended and supplemented under order of February 2, 1935, upon the ground that the Bill of Complaint as so amended and supplemented does not state any matter of equity entitling the plaintiffs to the relief prayed for, nor are the facts as stated sufficient to entitle the plaintiffs to any relief against the defendants.

WHEREFORE this defendant prays that the whole of said Bill of Complaint as so amended and supplemented may be dismissed.

HENRY T. HUNT,
As Special Assistant to the Attorney General, Attorney for Harold L. Ickes as Federal Emergency Administrator of Public Works.

(117)

OPINION.

Filed April 23, 1935.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF SOUTH CAROLINA.
EQUITY 451.

Duke Power Company and Southern Public Utilities Company, Plaintiffs,

vs.

Greenwood County and E. L. Brooks, S. A. Agnew and E. I. Davis, as members of and constituting The Finance Board for Greenwood County, and Harold L. Ickes, as Federal Emergency Administrator of Public Works, Defendants.

I. OUTLINE OF PROCEEDING.

This matter comes before the Court upon motions on behalf of all the defendants to dismiss the original bill, as modified and amended by plaintiffs' supplemental bill. The separate motion of Harold L. Ickes, as Federal Emergency Administrator of Public Works, is based upon the ground that the bill, as amended, "does not state any matter of equity entitling the plaintiffs to the relief prayed for, nor are the facts as stated sufficient to entitle the plaintiffs to any relief against the defendants". The motion filed on behalf of all other defendants is based upon three grounds:

"1. Because it appears in the bill of complaint as amended and supplemented that a proceeding entitled R. H. Park, in his own right and as a citizen and taxpayer of Greenwood County, and in behalf of other persons similarly situated v. Greenwood County, et al., has heretofore been instituted in the original jurisdiction of the South Carolina Supreme Court, and has been decided against the taxpayer in that action; therefore the ques-

(118) tions attempted to be raised by the plaintiffs in this action are *res adjudicata.*

2. In that the complaint as amended and supplemented shows upon its face that there is an insufficiency of fact to constitute a valid cause of action in equity against these defendants.

3. In that the complaint as amended and supplemented shows upon its face that the plaintiffs have no standing in Court to question the action of the defendants in the particulars set out in the bill and in the supplemental bill."

The last mentioned motion was filed February 23, 1935; that of Mr. Ickes, as Federal Emergency Administrator of Public Works, on April 9, 1935. The final brief of counsel upon these motions reached me on April 9, 1935. The purpose set out in the bill is to enjoin the defendants from doing certain acts complained of as illegal and unconstitutional, all of which will fully appear by reference to the pleadings, and will be more specifically detailed later on in this opinion. The Federal Emergency Administrator of Public Works was not made a party to the original bill, but upon his petition, concurred in by the other defendants, an order was passed allowing him to intervene and requiring that he be made a party defendant. Thereupon, the defendants submitted a motion to require the plaintiffs to amend the complaint by setting out the contract finally executed by and between the defendants, in lieu of the contract alleged in the complaint. This motion was refused, for the reason that the plaintiffs had used every effort to ascertain the terms of the contract, which had not then been signed, and, being advised by the defendants, who readily furnished the information, of what was then proposed, set out in the bill as an exhibit thereto the terms of the then proposed contract. Subsequently, the defendants made certain changes in the proposed contract, and advised the plaintiffs thereof, notwithstanding which the actual signing of the contract had not taken place, nor had the plaintiffs been advised of the changes proposed when the bill was filed, nor up to the time that the motion was filed. The defendants then an-

(119) swered, setting up the contract, which had been duly signed at the time of the filing of the answers, and filed motions to dismiss on the same substantial grounds as here presented. Following what the Court conceived to be the proper practice, as indicated by the Supreme Court in Borden's Company v. Baldwin, 293 U. S. 194, the Court refused the motions to dismiss. Thereafter, the plaintiffs were permitted to file their amended and supplemental bill, and after all the answers were in, the motions to dismiss, above outlined, were filed, and, at the arguments thereon, it was agreed that the Court should proceed with the hearing and render its decree based upon the truth of the facts alleged in the bill, which, for the purposes of the motions to dismiss, must be admitted. It was expressly understood, however, that the contract between the defendants, as finally signed, must be accepted as the true contract, in lieu of that originally alleged in the bill. In passing, it should be stated that it appeared to be first contemplated that certain testimony would be taken, but, as stated above, it was finally decided by both sides that this would be dispensed with.

II. FINDINGS OF FACT.

By way of preface to these findings, the Court thinks it proper to state that, upon the determinative issues involved, as it views the case, there are but few, if any substantial, issues of fact disclosed by the pleadings, and counsel for both sides have shown a commendable spirit of cooperation in their agreement by which the case may be brought to an early conclusion. Since the motions under consideration admit the truth of all the allegations of fact contained in the bill, and are, of course, part of the record, and, since it would too greatly prolong this opinion here to quote them in full, I think it only necessary here to find that the allegations of fact, as contradistinguished from conclusions of law, set out in the bill are true. To clarify the opinion, however, and for the convenience of the appellate courts which may subsequently be called upon to review this opinion, I will briefly summarize certain of the findings upon which my conclusions must and do rest, as follows:

(120) 1. The plaintiffs are electrical public utilities corporations, engaged in the intrastate sale and distribution of electric power and energy within the State of South Carolina; their business and their rates for such sales are subject to the exclusive jurisdiction, regulation and control of the Railroad Commission of said State; they have invested many millions of dollars in electric power facilities for the purpose of serving the territory in which the defendant, Greenwood County, intends, through its proposed Buzzard Roost project, to engage in the generation, distribution and sale of electric power in competition with the plaintiffs. The plaintiffs are adequately serving this territory and their established and available facilities are amply sufficient so to serve said territory for many years; their rates are just and reasonable and have been duly approved by said Railroad Commission; and they have heretofore secured and now own and use, for the purpose of conducting their business in said territory, valuable franchises and operating rights. Attention will be hereafter called to the provisions of the South Carolina statutes, imposing upon the plaintiffs numerous obligations, such as continued maintenance of service, enlargement of facilities, taxation, adherence to rates fixed by the Commission, and other duties, to many of which burdens the law does not subject Greenwood County. The bill of complaint adequately alleges the property rights of the plaintiffs, for the protection of which injunctive relief is sought in this suit.

2. The Federal Emergency Administrator of Public Works has entered into an agreement with his co-defendants, dated December 8, 1934, for the construction, on the Saluda River, in the State of South Carolina, at a point known as Buzzard Roost, of a hydro-electric plant, together with transmission and distribution lines extending into and through the Counties of Greenwood, Newberry and Laurens, for the purpose of engaging in the business of furnishing electrical energy to municipalities, industrial enterprises, private individuals, and the public generally, for domestic, commercial and industrial uses. The principal customers with whom the County has entered into contracts, and with whom it proposes to enter into contracts, for the sale of elec-

(121) trical energy to be produced by said plant, are now, and for a number of years have been, customers of the plaintiffs.

3. It is proposed to construct the plant under the supervision and direction of the Administrator, under an agreement by which he purports to be acting under Title II of the National Industrial Recovery Act. The contract provides for a loan and grant by the Administrator to his co-defendant County in an aggregate sum not to exceed $2,852,000.00. The grant will amount to thirty per centum of the cost of the labor and materials employed upon said project, and the loan will be represented by bonds to be issued by the County to the United States of America, both principal and interest of said bonds to be payable only out of the revenues of the plant. The contract specifically provides that the principal and interest on the bonds, and the maintenance and operation of the hydro-electric system, shall be paid solely and exclusively from the operation of said system, and that the cost of constructing and completing the system shall be paid exclusively from the proceeds of the bonds and the grant described in the contract.

4. It appears from the bill that the County has estimated, through its engineers, that the cost of the completion of the project will come within the limits of the amount to be furnished through the loan and grant, and that the County has set rates for the sale of power based upon these estimates, but that the project will actually cost an excess of more than one million dollars beyond the County's estimate; that the project will not be self-liquidating and self-supporting; and that, therefore, the rates fixed by the County in the contract with the Administrator will not meet the requirements of the State statutes under which it is proposed to construct and operate the plant.

5. The proposed rates of the defendants are substantially below the rates of the plaintiffs for serving the same territory, which rates of the plaintiffs have been approved by the Railroad Commission of the State of South Carolina, and it is on account of these lower rates that the defendants have been able to make contracts

(122) for the sale of the power which would be produced by said Buzzard Roost project with those who heretofore, and for a number of years, have been customers of the plaintiffs. If said project should be constructed by the defendants and put into operation, the plaintiffs, because of said lower rates, will be deprived of their customers in the territory in which said project would operate, and the business and property of the plaintiffs would be seriously and permanently injured.

6. The declared policy of the Federal Emergency Administrator of Public Works, as set out in Release No. 989, issued in August, 1934, a copy of which is attached to and made part of the amended bill of complaint, is that, in making appropriations of federal funds to municipally owned power projects, such as the Buzzard Roost, the enterprise so aided shall sell power at rates substantially below the rates of any privately owned electrical utility with which the municipality owned project will compete, thereby, in effect, constituting the rates of the municipally owned project a yardstick to regulate and bring about a reduction of the rates of the privately owned utility.

7. The rates for the sale of power to be produced by said Buzzard Roost project were fixed by Greenwood County, subject to the approval of the Administrator, under the terms of the loan and grant agreement entered into December 8, 1934, providing that, as a condition of the loan and grant, the County should "adopt a resolution satisfactory in form and substance to the Administrator providing for rates to be charged for services afforded by the hydro-electric system."

8. The Buzzard Roost project is a purely intrastate enterprise. The County does not propose, nor is it empowered, to engage in an interstate business.

9. It is proposed by the defendants to construct the enterprise in question solely through funds furnished by the Federal Emergency Administrator of Public Works, and the facts alleged indicate conclusively to the mind of the Court that it is not in contemplation of development through any other source. The possibility of such

(123) method of financing, if such possibility exists (which appears extremely doubtful), is not here under consideration. We are to deal with the case presented and with that case alone.

10. It is shown by its application filed with the Federal power Commission that the purpose of the County is to conduct a proprietary business by which it is proposed to sell by far the greater portion of its output to business enterprises generally outside of the County of Greenwood, and to furnish the smaller fraction thereof to customers in Greenwood County, the greater portion of which fraction it has contracted to sell, or proposes to enter into contracts to sell, to textile corporations. Counsel for the County in argument conceded that the largest of such contracts referred to in its application to the said Power Commission has already been abandoned. I, therefore, find that the County's proposed enterprise is not primarily for the purpose of establishing a utility to supply the needs of the County, but that it is proposed to do a general proprietary utilities business, both within and without the County, in competition with the plaintiffs.

11. By way of preface to the statement of my conclusions of law, attention is here directed to certain applicable provisions of South Carolina statutes. Among the duties imposed upon the plaintiffs by Act No. 871, approved April 8, 1932, and amendments thereto, are the following: The rates shall be just and reasonable and approved by the Railroad Commission; adequate, efficient and reasonable service must be furnished; no rate greater or less than that prescribed by the schedules so adopted shall be received or accepted; no unreasonable preference or advantage in rates or services shall be extended to any person, corporation or municipality; the rates are at all times subject to modification, change or annulment by the Commission as the public interest may require; the Commission may require the plaintiffs to establish, construct, maintain and operate any reasonable extensions of their existing facilities; the plaintiffs may not, without permission of the Commission, abandon all or any portion of their service to the public, except for non-payment of undisputed charges; every

(124) requirement, decision, rule or regulation of the Commission must be complied with. In Act No. 902, approved April 12, 1934, it is provided that all provisions of that Act, and all prior Acts, repugnant to or inconsistent with the provisions of the Public Works Administration Act of the Congress of the United States, are declared void in so far as the same are in conflict with said Act of Congress, it being declared to be the intention of Act No. 902 to enable counties, etc., to qualify for securing the loan from the Public Works Administration of the Federal Government. By Act No. 1095, approved April 12, 1934, Greenwood County, through its Finance Board, is authorized to procure a loan from the Public Works Administration for the purpose of constructing the plant in question, and, as a self-liquidating project, to issue bonds to secure the same.

12. If, and in so far as, it may be necessary for the purposes of this opinion to consider other facts established by the bill, they will be appropriately hereinafter referred to.

III. CONCLUSIONS OF LAW.

1. Plea of *Res Adjudicata.* The bill sets out in detail the proceedings brought in the original jurisdiction of the Supreme Court of South Carolina for the purpose of testing the constitutionality of the right of the County to procure the loan in question, and to establish with the proceeds thereof the proposed Buzzard Roost plant. That was an application for an injunction upon the part of Dr. R. H. Park, in his own right as a citizen and taxpayer of Greenwood County, and in behalf of other persons similarly situated. The County itself, its County Supervisor, its County Treasurer, and another of its citizens, constituting its Finance Board, were made parties defendant. After the pleadings were filed, the Duke Power Company and the Southern Public Utilities Company, alleging their status as large property holders and taxpayers, and as holders of valuable franchises, filed a petition to be allowed to interplead. To this petition, all parties to the cause, plaintiff and defendants, objected, and the petition was denied by the Supreme

(125) Court, which, however, gave permission to petitioners to participate in the argument of the case as presented by the pleadings then before the Court. Petitioners, however, declined to avail themselves of this privilege. The suit thus brought was a friendly one, and, as stated by the Supreme Court, Park v. Greenwood County, 174 S. C. 35, 176 S. E. 870, three issues were presented for determination, namely:

"(1) May the Legislature permit or authorize a county to construct and operate a hydro-electric plant for the uses referred to above?

(2) Do the revenue bonds issued, or here sought to be issued, pursuant to the Act of May 8, 1933, constitute debts within the limitations of section 7 of article 8 and sections 5 and 6 of article 10 of the Constitution?

(3) Does the proposed ordinance, submitted as an exhibit to the pleadings, comply with the provisions of the Act of May 8, 1933?"

The decision of the Court was upon these three issues alone, and all of the questions were answered in the affirmative. The uses and purposes referred to in Question No. 1 were stated by the Court, as follows:

"It appears that Greenwood County has made application to the Public Works Administration, under the provisions of the Revenue Bond Act of May 8, 1933 (38 Stat. at Large, p. 411), as amended, for a loan to be used in the erection of a hydro-electric plant at "Buzzard Roost" on the Saluda River; the electrical energy generated to be sold by the county to cities, towns, corporations, and individuals within and without its territorial limits."

Plaintiffs herein, in order to intervene, and as a basis of their right to intervene, not only raised substantially the questions decided by the Supreme Court, but also (Par. 7, et seq.), set up, among other additional issues, their status as owners of valuable franchises, their compliance with all rules and regulations of regulatory authorities, the large expenditures which they have made

(126) in establishing their plants in this State, through which they had given employment to many thousands of people, and the resultant danger of depriving them of a large part, if not the whole, of their business in Greenwood County and adjoining counties by means of unlawful competition. They also, (Par. 9), alleged that neither the complaint nor the return and answer in said suit raised all the issues of fact or of law upon which the sound and just judicial determination of the validity of the acts and proceedings of the defendants with respect to said power project depended, and that there had not been invoked all applicable provisions of the State and Federal law, nor the applicable provisions of the State and Federal Constitutions, either expressly or impliedly. Therefore, the petitioners for intervention in that cause, as plaintiffs here, clearly cannot be held to be concluded by the decision in that case from now asserting any of the new issues herein presented. The concrete rights asserted by the plaintiffs in the instant case to be protected against unfair and illegal competition, and their right to invoke the provisions of the Federal Constitution herein asserted, were left out of the question entirely. No question was made, or permitted to be made, of their status and obligations as holders of public utilities franchises, nor of the nature of the contracts proposed to be entered into with customers and with the Public Works Administration, including the method of fixing rates, nor of numerous other questions here involved. I hold that the decision of the Supreme Court of South Carolina is controlling to the extent, and to the extent only, of the issues decided in the State case, but that the plea of res adjudicata must be overruled and dismissed because of other issues herein presented and undetermined by that decision, especially since neither were the plaintiffs parties, nor was the defendant Administrator party, to that cause.

2. Compliance with the terms of the Public Works Administration Act. (Title II, N. I. R. A.) The plaintiffs have laid considerable stress upon the contention that the proposed contract is ultra vires, because it is violative of and not in compliance with the terms of the Act, nor of the comprehensive program adopted by the President for the Administration of Public Works Ad-

(127) ministration funds, and for the reason that the credit of the County is not pledged to secure the payment of the bonds, and there is no sufficient guaranty on the part of the County that the project will be completed. The contention that the proposed contract is ultra vires, because the credit of the County is not pledged to secure the payment of the bonds, is, I think, without merit. Unquestionably, a large discretion is vested in the Administrator, with which the Courts may not interfere, especially unless there is such abuse of that discretion as to justify intervention. Furthermore, the Act itself, providing for the appointment of the Administrator, and the laws of the State, specifically make provision for self-liquidating projects of the character here proposed. The suggestion of the absence of compliance with the Statute by failure to adopt a sufficient comprehensive program is also without merit. The contention, however, that the contract is ultra vires, because violative and not in compliance with the terms of the Act, nor of the comprehensive program adopted by the President, and that there is no sufficient guaranty on the part of the County that the project will be completed, presents another question.

Significant among the provisions of the Act, Section 203 (d), is the authorization of the President to extend the benefits of the Act "to any State, county, or municipality notwithstanding any constitutional or legal restriction or limitation on the right or power of such State, county or municipality to borrow money or incur indebtedness". The Act thus empowers the President to aid such state, county or municipality in the performance of an unconstitutional act, irrespective of the injury that may result to taxpayers or their businesses. Significant, also, in the rules prescribed by the President, Circular No. 1, July 31, 1933, is the provision, Section 8, Page 8, that among the projects to be preferred as to the grant shall be included "projects for the transmission of electrical energy into territories not now served", and that "the grant will not be allowed unless the public body either (a) has power to sell to the United States its bonds in sufficient amount to reimburse the United States for its outlay (less the grant if allowed) in connection with the project and enters into

(128) a contract so to do and to complete the project, or (b) has power to convey the site of the project to the United States and contracts so to do, and to pay rental sufficient to reimburse the United States for its outlay less the grant if allowed, and to complete the project, or (c) is in process of securing the necessary powers and the Administrator is convinced that such powers will be obtained, or (d) in special cases as the President may determine." The first of the provisions above-referred to clearly indicates that it was not intended to aid by grant the establishment of projects for the transmission of electrical energy into territories which, as here, are now adequately and fairly served at reasonable rates, and that, in proposing to do so in the instant case, the Administrator is not complying with the terms of the comprehensive program. Furthermore, the latter provision referred to is a specific limitation upon the authority of the Administrator to extend the grant in any case where a county fails to enter into a contract to complete the project, or to convey the site of the project, and contracts to do so, and to pay rental sufficient to reimburse the United States for its outlay, or is in process of securing these powers so as to convince the Administrator that they will be obtained, or in special cases as the President may determine. Certainly there is no indication here that the President has made a determination in this special case. The contract entered into, in pursuance of this program, limits the application of the funds derived from the grant and the bonds to the *construction* of the plant, and does not extend it to the *purchase* of the site. Taken in connection with the rules prescribed in this Circular, which requires the County itself to provide for preliminary expenses and the showing of title to the site of the plant, we are of opinion that it was not intended to confer upon the Administrator the right to allocate funds, either by loan or grant, for purposes other than construction. To do so would be ultra vires upon the part of the Administrator, and not only would the County be charged by the terms of the contract with the payment of whatever expenses should be required to procure the authorization and issuance of the bonds, but also for the acquisition of the site of the plant out of its general funds, with the result that the plaintiffs, as taxpayers, would be required to contribute

(129) thereto. We find nothing in the Act, nor in the rules prescribed by the President, nor in the contract, to authorize or require the application of Public Works Administration funds for this purpose. Let it be borne in mind, as above stated, that what the County proposes to do is not in the exercise of ordinary governmental functions, but is to establish a proprietary business; that the situation of the County differs from that ordinarily occupied by cities and towns already in control of the streets and other properties necessary for the enlargement or construction of municipal lighting plants. In this connection, let it be further remembered that the motion admits the allegations of the bill that the loan and grant combined are insufficient to provide for the completion of the project, and that the estimated revenues are insufficient to make the project self-liquidating, and thereby "reasonably secure" the payment of the loan.

3. Unlawful delegation of legislative powers by the Act. Properly construed, if the Act be held to be constitutional, there is no unlawful delegation of legislative powers therein, and the decision in the case of Panama Refining Co. v. Ryan, 293 U. S. 388, is not applicable. I do not think, however, that the Act delegates, nor was intended to delegate, to the President, nor to the Public Works Administration, any power to regulate the rates of utilities companies. That power, where it exists in matters affecting interstate commerce, is delegated to other bodies, and the assumption of that power to accomplish the declared purpose of the Public Works Administration to force utilities companies to lower their rates, without regard to their ability to do so, or consequent confiscatory results, would be ultra vires and not within the terms of the Act. The decision, however, should rest upon result rather than purpose, which is always presumed as the natural consequence of an act.

4. Plaintiffs' right to maintain the suit. A number of cases have recently been decided by the lower courts involving this and other questions here presented. These decisions are not in harmony, and it would too greatly prolong this opinion to review them in detail. The

(130) Supreme Court has definitely decided that one's mere status as a federal taxpayer presents no justiciable controversy, and confers no right to challenge the constitutionality of an act of Congress. To authorize such challenge in a court of equity, it is necessary that the complainant, because of the exercise of an unconstitutional act authorized by Congress, shall have suffered, or be threatened with subjection to, some special injury, differing in character and degree from that suffered in common with other taxpayers, Massachusetts v. Mellon, Frothingham v. Mellon, 262 U. S. 447, 43 S. Ct. 597, 67 L. Ed. 1078. It was held in these cases, quoting from Cherokee Nation v. Georgia, 5 Pet. 1, 75, that "it is only where the rights of persons or property are involved, and when such rights can be presented under some judicial form of proceedings, that courts of justice can interpose relief. This court can have no right to pronounce an abstract opinion upon the constitutionality of a state law. Such law must be brought into actual or threatened operation, upon rights properly falling under judicial cognizance, or a remedy is not to be had here." At Page 488, further discussing the Frothingham case, the Court said: "We are not now speaking of the merely ministerial duties of officials. Gaines v. Thompson, 7 Wall. 347. We have no power *per se* to review and annul acts of Congress on the ground that they are unconstitutional. That question may be considered only when the justification for some direct injury suffered or threatened, presenting a justiciable issue, is made to rest upon such an act." The last quoted case furnishes an interesting discussion in which is clearly outlined the difference between merely ministerial acts, which the court may review, and acts done in the exercise of official discretion, which the court is powerless to review. It is significant, however, that one of the justifications of this decision, and others previously rendered, was the negligible amount of tax exacted from its citizens by the Federal Government. The decision antedated recent enactments of Congress providing for appropriations reaching into many millions of dollars per year in amounts so vast as to stagger the imagination. Certainly it cannot now be said that these taxes are negligible, especially where the taxpayers, as in the case of public utilities companies, operating under state or federal

(131) franchises, and, therefore, subjected to special burdens, must pay out of their revenues large amounts by way of income or privilege taxes. Furthermore, the plaintiffs here do not base their rights upon their status as federal taxpayers, but as taxpayers of the State of South Carolina and of the counties in which the enterprise sought to be enjoined is to be established, and although a self-liquidating project, the contract requires of the County certain outside expenditures to which the plaintiffs, as taxpayers, must contribute. As such, their right to maintain an action to challenge the constitutionality of a state statute has long been an established principle in South Carolina, in the states generally, and in federal courts vested with jurisdiction. I fail to discover any valid reason why, by the same principle, a federal court should be denied the right to pass upon the constitutionality of an act of Congress which results, in its last analysis, in the exaction of a tax payable to the state. As stated above, however, the plaintiffs not only ground their claim upon their status as taxpayers of the State, but also on the ground that, as holders of valuable franchises, they are subjected to unfair and illegal competition. I think, therefore, that the case, in that respect, comes squarely under the decision in Frost v. Corporation Commission, 278 U. S. 515, 49 S. Ct. 235, 73 L. Ed. 483. The appellant in that case owned a cotton ginning business, which he operated under a permit from the State Corporation Commission of Oklahoma. Under a statute, originally passed in 1915, and amended from time to time, cotton gins are declared to be public utilities, and their operation for the purpose of ginning seed cotton to be a public business. The State Corporation Commission is empowered to fix their charges and to regulate and control them in other respects. No gin can be operated without a license from the Commission, to secure which is required a satisfactory showing of public necessity. Some time after the passage of the original act, it was amended by the addition of a proviso: "that on the presentation of a petition for the establishment of a gin to be run co-operatively, signed by one hundred (100) citizens and taxpayers of the community where the gin is to be located, the Corporation Commission shall issue a license for said gin." By an act of the Legislature passed in 1917, permission was given for the for-

(132) mation of co-operative agricultural or horticultural associations not having capital stock or being conducted for profit, for the purpose of mutual help by persons engaged in agriculture and horticulture. In 1919, an act was passed permitting ten or more persons to form a corporation for the purpose of conducting, among others, an agricultural or horticultural business upon a co-operative plan, with certain provisions for the issuance and sale of capital stock, the limitation upon the number of shares permitted to be held by one person, payment of dividends, the setting aside of a surplus or reserve fund, the setting aside of five per cent for educational purposes, and the manner in which the remainder of the profits of the corporation must be apportioned among its members. The appellee, Durant Company, was organized in 1926, under the act of 1919, and made application for a permit to establish a cotton gin at Durant, covering the same location as that for which the appellant had obtained his permit under a showing of public necessity. Upon the filing of the application of appellee Company for a permit, appellant protested in writing, and there was a hearing before the Commission upon the ground that there was no showing of public necessity for the establishment of this additional utility. The Commission, however, rejected the offer to show that there was no further necessity, and held that the proviso made it mandatory to grant the permit applied for, without regard to necessity. Thereupon, suit was brought to enjoin the Commission from issuing the permit, and to enjoin the Durant Company from the establishment of its enterprise, upon the ground that the proviso, as construed and applied by the Commission, was invalid as contravening "the due process and equal protection of the law clauses of the Fourteenth Amendment." The Supreme Court, reversing the lower court, sustained these contentions. The whole opinion is instructive, but, for the purposes of this case, we need only quote the following:

"Appellant, having complied with all the provisions of the statute, acquired a right to operate a gin in the city of Durant by valid grant from the state acting through the corporation commission. While the right thus acquired does not preclude the state from making

(133) similar valid grants to others, it is, nevertheless, exclusive against any person attempting to operate a gin without obtaining a permit or, what amounts to the same thing, against one who attempts to do so under a void permit; in either of which events the owner may resort to a court of equity to restrain the illegal operation upon the ground that such operation is an injurious invasion of his property rights. * * * The injury threatened by such an invasion is the impairment of the owner's business, for which there is no adequate remedy at law. * * * Immunity to one from a burden imposed upon another is a form of classification and necessarily results in inequality; but not necessarily that inequality forbidden by the Constitution. The inequality thus prohibited is only such as is actually and palpably unreasonable and arbitrary. * * * The purpose of the clause in respect of equal protection of the laws is to rest the rights of all persons upon the same rule under similar circumstances. * * * This Court has several times decided that a corporation is as much entitled to the equal protection of the laws as an individual. * * * The converse, of course, is equally true. A classification which is bad because it arbitrarily favors the individual as against the corporation certainly cannot be good when it favors the corporation as against the individual. In either case, the classification, in order to be valid, 'must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.'"

The Court further declared:

"That the immunity thus granted to the corporation is one which bears injuriously against the individual does not admit of doubt, since by multiplying plants without regard to necessity the effect well may be to deprive him of business which he would otherwise obtain if the substantive provision of the statutes were enforced."

See, also, Public Service Commission v. Utilities Company, 289 U. S. 130, 53 S. Ct. 546, 77 L. Ed. 1080; Hegeman Farms Corporation v. Baldwin, 293 U. S. 163.

In the instant case, the bill alleges, and the motion

(134) admits, plaintiffs' franchises and compliance with the law. Their obligation to adequately serve the communities proposed to be served by the Buzzard Roost project is admitted, as well as their ability to do so. That their rates are fair and reasonable is also admitted, as also that they will suffer irreparable injury by the competition proposed. In this connection, it should be borne in mind that what the County proposes to do does not involve one of the ordinarily administrative functions of the Government, but the establishment of a proprietary business of the same identical character as that of the plaintiffs, and for which the bill alleges, and the motion to dismiss admits, there is no necessity. If the County may do this without reference to the property rights and franchises of the plaintiffs, the business which the plaintiffs are required to continue, as well as the service which they are required to furnish, is in imminent danger of being impaired, if not destroyed. It is to be noted that in City of Allegan v. Consumers' Power Company, (CCC-6), 71 F. (2d) 477, much relied upon by the defendants, as well as certain others of the cases in which injunction was refused, the decision turned entirely upon the right of the plaintiffs, as taxpayers, to maintain their causes in equity. In 5 Pomeroy's Equity Jurisprudence, (2d Ed.), §§583-584, Page 4558, et seq., will be found a succinct and accurate statement of the law declaring an injunction to be the appropriate remedy to protect a party in the enjoyment of both an exclusive and non-exclusive franchise against continuous encroachments. See, also, Gallardo v. Porto Rico Railway, Light & Power Co., (CCA-1), 18 F. (2d) 918, 922; City of Campbell, Mo., v. Arkansas-Missouri Power Co., (CCA-8), 55 F. (2d) 560, 562; Iowa Southern Utilities Co. v. Cassill, (CCA-8), 69 F. (2d) 703, 704; Oklahoma Utilities Co. v. City of Hominy, (DC Okla.), 2 F. Supp. 849, 851; Missouri Public Service Co. v. City of Concordia, Mo., (DC Mo.), 8 F. Supp. 1, 4; Princeton Power Co. v. Calloway, (W. Va.), 128 S. E. 89; Puget Sound Traction, L. & P. Co. v. Grassmeyer, 102 Wash. 482, 173 Pac. 504, L. R. A. 1918F, 469, 474. In passing upon the foregoing issue, it must be understood that nothing that has been said is intended to challenge the abstract rights of a county or municipality in South Carolina, under the State Constitution, to establish utilities plants of the character proposed, nor the abstract right,

(135) where legally authorized to do so, to fix rates. The plaintiffs base their right to equitable intervention upon the concrete claim that the County proposes to establish a proprietary business enterprise and enter into illegal and unfair competition, and to fix illegal and ruinous rates, in competition with the plaintiffs, as public utilities companies, who are burdened by law with many other expenses and obligations from which the County is relieved.

Having disposed of the issues embraced in the foregoing discussion, we come now to what is regarded as the most important and far-reaching of the issues presented, presenting questions of law at once difficult and delicate of determination, and requiring most extensive investigation and most serious deliberation. These involve:

5. Constitutionality of Title II of the Act, providing for the establishment of the Public Works Administration, as applicable to the facts of this case. It is the plaintiffs' contention that the authority thus conferred by Congress is not embraced within any of the delegated powers of Congress, and is also violative of the Fifth, Tenth and Fourteenth Amendments to the Constitution. The defendants assert its constitutionality under the congressional powers conferred by Article 1, Section 8, of the Constitution, and particularly, under Clause 1, empowering Congress "to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States; * * * ;" also, under Clause 3 of that Section, empowering Congress "to regulate commerce with foreign nations, and among the several States, and with the Indian Tribes;" also, under the general or collective powers embraced in Clause 18 of that Section—"To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof;" and under Article 4, Section 3, Clause 2, by which Congress has power to dispose of the property of the United States. I conceive it to be a duty

(136) from which I may not escape to determine the constitutional issues thus presented, and upon which the plaintiffs have invoked, and have a right to require, my conclusions. I am fully conscious of the responsibility thus imposed, and of the rule, which has frequently and uniformly been reiterated by the Supreme Court, that a legislative act should not be declared unconstitutional in any respect except for the clearest and most convincing reasons. The rule laid down by the Supreme Court of South Carolina goes to the extent of declaring that such an act should not be declared unconstitutional unless its infirmity appears to the satisfaction of the Court beyond a reasonable doubt. These principles are founded upon the soundest and most impelling of reasons. The positive provisions of all our Constitutions, State and National, dividing as they do the powers to be exercised by government into three branches, forbid the encroachment by one branch upon the just prerogatives of another. The courts have no right in the abstract to interfere with the enforcement of a legislative act, nor even to declare it unconstitutional, unless empowered by the Constitution itself to intervene for the protection of personal or property rights guaranteed by that instrument. On the other hand, where a right exists and is invoked, which the Constitution makes it the duty of the courts to protect, they may not, without dereliction of duty and betrayal of their trust, decline to function. Therefore, it follows that they are charged with no higher or more imperative duty than that of protecting the citizens against unconstitutional encroachments upon the rights guaranteed by that document. We are confronted here with a case which requires extreme caution, and which, if such were ever permitted, would justify the greatest reluctance to decide. We take judicial cognizance of the facts set out in Section 1, Title I, of the National Industrial Recovery Act, that the country was and is confronted with a national emergency productive of widespread unemployment and disorganization of industry, and that Congress was called upon to exercise every reasonable means within its constitutional powers to relieve that emergency. Confronted as it was and is with a situation so desperate, and with the further necessity of taking immediate and drastic steps for relief by calling into exercise every power with which it is clothed

(137) by the Constitution, and with exercising those powers to the utmost limits of the grant, it was naturally to be anticipated that some of the enactments of the Congress would transcend the constitutional limitations. In the twilight zone of these limitations it should be no matter of criticism, and certainly it is not the intention of the Court to criticize Congress for lack of discernment of the exact boundary of its powers, nor the executives for carrying into effect the enacted laws. It was almost inevitable that mistakes should be made. If and when these should occur they had and have a right to rest upon the assurance that the powers of the courts should be invoked, and would be invoked, to correct their error, and to preserve and defend all constitutional guaranties, as by their oaths, as well as those of the courts, they are bound. If and when, therefore, the courts are called upon to discharge this duty of preserving constitutional rights, they should naturally receive the commendation rather than the condemnation of the legislative and executive authorities, as well as the general public, who, in common with the courts and as a matter of patriotism, must or should desire the preservation of these fundamental rights. The fact, in so far as it be a fact, that powers within the constitutional grant had not previously been asserted would furnish no consideration whatever for denying the present right to invoke these powers. However, it is well settled, as stated in Home Building & Loan Association v. Blaisdell, 290 U. S. 398, 425-426, 54 S. Ct. 231, 78 L. Ed. 413, 88, A. L. R. 1481, that "emergency does not create power. Emergency does not increase granted power or remove or diminish the restrictions imposed upon power granted or reserved. The Constitution was adopted in a period of grave emergency. Its grants of power to the Federal Government and its limitations of the power of the States were determined in the light of emergency and they are not altered by emergency. What power was thus granted and what limitations were thus imposed are questions which have always been, and always will be, the subject of close examination under our constitutional system. While emergency does not create power, emergency may furnish the occasion for the exercise of power." And, quoting from Wilson v. New, 243 U. S.

(138) 332, 348, the Court further said: "Although an emergency may not call into life a power which has never lived, nevertheless emergency may afford a reason for the exertion of a living power already enjoyed." If emergency could be construed to grant new powers to Congress, the mere declaration by Congress that an emergency exists in any particular would permit an enlargement of legislative privileges and the consequent amendment of the Constitution, in contradiction and destruction of the requirements of that instrument. That may not be done by any one or the combined cooperation of all of the coordinate branches of the Government. It may not be accomplished by legislative, executive and judicial cooperation. It may not be done by cooperation of these with the legislatures of every state in the Union. The right of amendment is reserved to the people from whom the powers conferred expressly emanated, and whose voice, by a two-thirds vote, either through delegates in constitutional conventions assembled or representatives in the legislatures of two-thirds of the States, must determine. If it were otherwise, the guaranties for which our ancestors, particularly those of Anglo-Saxon blood, fought for almost a thousand years could be bartered away at will. Acquaintance with current affairs brings to view the claims of certain public writers and public speakers, who maintain that the Constitution was intended to be an elastic instrument, to be interpreted in the light of modern needs, and that it is the duty of the courts to construe the instrument in the manner best suited to reach those needs. If this were permissible, and the courts and the legislative bodies were required to meet the demand of every passing clamor, the rights obtained through the years of sacrifice of our ancestors would soon be wiped out. We prefer to follow the view expressed by the late Mr. Chief Justice Taft, who said, in effect, that our form of government could not be changed by judicial pronouncement. Time will not permit us in this opinion to review the various steps through which our independence was achieved and our liberties guaranteed under the provisions of the supreme law of the land. The fact remains that the purposes of these sacrifices were finally accomplished and guaranteed in the adoption of the Constitution, under which for approximately one hundred and fifty years the Nation has

(139) grown and prospered, and enjoyed a degree of liberty beyond that of any other nation on earth. The battle-cry of our soldiers in the World War was to make the world safe for democracy. Among the results accomplished was the dethronement of many kings and emperors. There was universal approval and gratification in America at the accomplishment of this first purpose. There followed in many countries the establishment of so-called republican forms of government, but the second great and indispensable necessity of constitutionally guaranteeing the liberties thus obtained was omitted, and the tragic results are known to all. Instead of the guaranty of liberty to the people, there were set up dictatorships, more absolute and more oppressive in many instances than anything that had existed under more or less absolute monarchs. The sanctity of the home, the right to acquire property and to enjoy the fruits of one's industry, the right of religious worship, freedom of speech, and many other things jealously guarded by our Constitution, were and are discarded. It is due to the gallant members of the American Legion, and to their comrades in arms who made the supreme sacrifice, that American should see to it that their struggles and sacrifices were not in vain. To that end every guaranty of our Constitution should be preserved, and every encroachment thereon resisted. The government under which we live and prosper is essentially a republican form of government, and utterly opposed not only to royal domination, from which we were freed by the Revolution, but equally opposed to other forms, whether communistic, socialistic, bureaucratic, or dictatorial. If it should ever occur that the people desire to substitute one of these forms, let it be accomplished by proper amendment of the Constitution as the law provides.

Coming specifically to the consideration of the question of the preservation of property rights involved in the instant case, the pronouncement of the Supreme Court in Knoxville v. Water Company, 212 U. S. 1, 18, 29 S. Ct. 148, 53 L. Ed. 371, is in point and impressive. Among other things, the Court said:

"Our social system rests largely upon the sanctity of private property, and that State or community which

(140) seeks to invade it will soon discover the error in the disaster which follows. The slight gain to the consumer, which he would obtain from a reduction in the rates charged by public service corporations, is as nothing compared with his share in the ruin which would be brought about by denying to private property its just reward, thus unsettling values and destroying confidence."

The defendants' claim of constitutionality is to be tested by the settled principle that the United States Government is one of delegated powers, which Congress may not transcend, and that the right to legislate must depend upon specific constitutional grant or be necessarily incidental thereto. So far as the rights conferred under Clause 18, Section 8, Article 1 of the Constitution are concerned, they so obviously are limited to the specified purposes named in other clauses of that section as to need no comment, and, indeed, the argument of counsel is practically, if not entirely, limited to claims of right arising out of Clauses 1 and 3 of said section, popularly designated as the general welfare and commerce clauses. Furthermore the mention of Clause 2, Section 3, Article 4, in the argument is rather incidental than otherwise. The National Industrial Recovery Act itself in terms declares the policy of Congress to remove obstructions to the free flow of interstate and foreign commerce, and to provide for the general welfare, and bases its assertion of authority on the power conferred by the clauses thus invoked. We think that it will be sufficient, therefore, to limit our further discussion to these two clauses and consider them in their inverse order.

A. Commerce. That the legislation in question does not come within the powers of Congress under the commerce clause seems too well settled to require argument. If there could have existed any doubt under the Constitution as originally adopted, that was effectually removed by the subsequent and almost immediate adoption of the first ten amendments, each in turn being a restriction upon federal power, and each specifically prohibiting the enactment of laws regarding matters affecting individual rights and local self-government, the Fifth Amendment affecting particularly property as well as personal rights, the Ninth Amendment, declaring that

(141) "the enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people," and the Tenth Amendment, especially reserving to the states, respectively, or to the people, all powers not delegated,—and, I may add, not specifically delegated—to the United States by the Constitution nor prohibited by it to the states.

What is interstate commerce, and when an article locally produced or manufactured becomes the subject thereof, has frequently from an early period of our national existence been clearly defined and outlined, and no principle seems more clearly established than that the regulatory powers of Congress, under the commerce clause, may not be invoked as to purely intrastate enterprises. The first clear case thus decided was that of Gibbons v. Ogden, 22 U. S. (9 Wheat.) 1, 83, where the Court, speaking through Mr. Chief Justice Marshall, said:

"The subject to be regulated is commerce; and our constitution being, as was aptly said at the bar, one of enumeration, and not of definition, to ascertain the extent of the power, it becomes necessary to settle the meaning of the word. * * * Commerce, undoubtedly, is traffic, but it is something more—it is intercourse. It describes the commercial intercourse between nations, and parts of nations, in all its branches, and is regulated by prescribing rules for carrying on that intercourse. * * * It has, we believe, been universally admitted, that these words comprehend every species of commercial intercourse between the United States and foreign nations. * * * The subject to which the power is next applied, is to commerce, 'among the several states'. The word 'among' means intermingled with. A thing which is among others, is intermingled with them. Commerce among the states cannot stop at the external boundary line of each state, but may be introduced into the interior. It is not intended to say, that these words comprehend that commerce, which is completely internal, which is carried on between man and man in a state, or between different parts of the same state, and which does not extend to or affect other states. Such a power would be inconvenient, and is certainly unnecessary. * * * The genius and character of the whole government seem to be, that its action is to be applied to all the external

(142) concerns of the nation, and to those internal concerns which affect the states generally; but not to those which are completely within a particular state, which do not affect other states, and with which it is not necessary to interfere, for the purpose of executing some of the general powers of the government. The completely internal commerce of a state, then, may be considered as reserved for the state itself."

See, also, Brown v. Maryland, 25 U. S. (12 Wheat.) 266. The language of Mr. Justice Lamar in Kidd v. Pearson, 128 U. S. 1, 20, 9 S. Ct. 6, 32 L. Ed. 346, is particularly applicable here, to the effect that "no distinction is more popular to the common mind or more clearly expressed in economic and political literature, than that between manufactures and commerce. Manufacture is transformation—the fashioning of raw materials into a change of form for use. The functions of commerce are different. The buying and selling and the transportation incidental thereto constitute commerce; and the regulation of commerce in the constitutional sense embraces the regulation at least of such transportation." Quoting from County of Mobile v. Kimball, 102 U. S. 691, 702, the learned Justice further said:

"Commerce with foreign countries, and among the States, strictly considered, consists in intercourse and traffic, including in these terms navigation, and the transportation and transit of persons and property, as well as the purchase, sale, and exchange of commodities."

Continuing the Court said:

"If it be held that the term includes the regulation of all such manufactures as are intended to be the subject of commercial transactions in the future, it is impossible to deny that it would also include all productive industries that contemplate the same thing. The result would be that Congress would be invested, to the exclusion of the States, with the power to regulate, not only manufactures, but also agriculture, horticulture, stock raising, domestic fisheries, mining—in short, every branch of human industry. For is there one of them that does not contemplate, more or less clearly, an interstate or foreign market? * * * The power being vested in

(143) Congress and denied to the States, it would follow as an inevitable result that the duty would devolve on Congress to regulate all of these delicate, multiform and vital interests—interests which in their nature are and must be local in all the details of their successful management."

The Court goes on to call attention to the danger, in attempting to regulate internal affairs, of conflict between the state and federal laws, saying: "A situation more paralyzing to the state governments, and more provocative of conflicts between the general government of the States, and less likely to have been what the framers of the constitution intended, it would be difficult to imagine." See, also, License Tax Cases, 5 Wall. 462, 470. There followed decisions by the Supreme Court to the same effect and further outlining the specific requirements to constitute an article one in interstate commerce. A recent one is that of Chassaniol v. Greenwood, 291 U. S. 584, 54 S. Ct. 541, 78 L. Ed. 1004, wherein the Court declared that ginning cotton, transporting it to a place within the same state, and warehousing, buying and compressing it there, are each steps in preparation for the sale and shipment in interstate or foreign commerce, but that each of such steps prior to the sale and shipment is local, and a transaction in intrastate commerce. In Hammer v. Dagenhart, 247 U. S. 251, 38 S. Ct. 529, 62 L. Ed. 1101, 3 A. L. R. 649 Ann. Cas. 1918E, 724, the Court, quoting from In re Green, 52 Fed. 113, stated:

"When the commerce begins is determined, not by the character of the commodity, nor by the intention of the owner to transfer it to another state for sale, nor by his preparation of it for transportation, but by its actual delivery to a common carrier, for transportation, or the actual commencement of its transfer to another state."

See, also, Coe v. Errol, 116 U. S. 517, 6 S. Ct. 475, 29 L. Ed. 715. In the light of these cases, and many others to the same effect, we fail to find the slightest justification of the right of Congress to legislate in the instant case under the commerce clause. The proposed project is not only limited to doing business within the State boundaries, but is further limited to certain counties in the State, and the legislative act under which its

(144) authority was granted to the same extent limited the territory in which it was given the right to conduct the business. In argument, counsel for the defendants suggested, but did not argue in extenso, the right of Congress to aid the project for the purpose of regulating the flow of the stream, and thus contribute to its navigability at points nearer the sea. It was not contended, however, that the stream is or may be made commercially navigable at or near Buzzard Roost, nor that in establishing the project anything further was contemplated than to develop, transmit and sell electrical power locally. Congress has not acquired, not attempted to acquire, the plant, nor does the contract contemplate its acquisition, maintenance or operation for any purpose other than that of operating the electrical power project as stated in the contract and in the acts authorizing its construction by Greenwood County. I see no merit, therefore, to this contention.

B. General Welfare. Both before and ever since the adoption of the Constitution, the proper interpretation of its general welfare clause has been the subject of much discussion and controversy. At the beginning, the chief exponent of the contention that it should itself be interpreted to enlarge the powers of Congress, and, independently of all other sections, confer a substantive right to legislate upon all matters affecting the common good of the nation, and clothing Congress with discretionary powers in the determination of what constitutes the general welfare, was Alexander Hamilton. It is well known that his views were that the Constitution should provide for a greater centralization of powers in the Federal Government. Championing the opposing view, to the effect that the expression was not intended to create any additional power in Congress, but was a term employed to qualify the purposes for which taxes, duties, imposts and excises should be laid, was James Madison. It is also well known that the Madisonian interpretation was the one which the Convention accepted and upon which it acted and the uniform line of decisions of the Supreme Court has approved this interpretation. As operating upon this clause, the Supreme Court has uniformly recognized the restrictions placed upon Congress in other sections of the Constitution. It is a matter of common knowledge that the antagonism of the people

(145) and of the several states would never have permitted the adoption of the Constitution if the Hamiltonian contention had been aaccepted or thought even possible. Even after the adoption of the original instrument, as stated above, the first ten amendments were almost immediately adopted for the purpose of more clearly defining this view, and of more effectively denying to Congress the right to legislate upon purely local affairs not affecting interstate commerce, and it is now generally conceded that the only substantive power granted in the clause under discussion is that of laying taxes, etc., and that the remainder of the provision, specifying the purposes for which taxes can be levied, is a limitation upon that power. Story, in his Commentaries on the Constitution, published in 1883, said (§919):

"A power to lay taxes for any purposes whatsoever is a general power; a power to lay taxes for certain specified purposes is a limited power. A power to lay taxes for the common defense and general welfare of the United States is not in common sense a general power. It is limited to those objects. It cannot constitutionally transcend them." (See 1 Willoughby on the Constitution, 2d Ed., §61, Pages 97-98.)

Further commenting upon this subject in the same work, (§§907-908), this learned writer and recognized authority on the interpretation of the Constitution, said that if the clause be interpreted, as is contended for by the defendants in this case, to constitute another and distinct, substantial power, "then it is obvious that, under color of the generality of the words 'and provide for the common defense and general welfare', the government of the United States is, in reality, a government of general and unlimited powers, notwithstanding the subsequent enumeration of specific powers." We invite especial attention to the able opinion of Judge Rogers in United States v. Boyer, (DC Mo.), 85 Fed. 425; also to the learned opinion pronounced by the Supreme Court of the Massachusetts in Lowell v. City of Boston, 111 Mass. 454, 15 Am. Rep. 39; to Wiseman v. Tanner, 221 Fed. 694; and to the admirable opinions of Newton D. Baker and James M. Beck, filed in their printed brief rendered to the President of the Edison Electric Institute, dated November 22, 1934—January 11, 1935. We

(146) fail to find any case decided by the Supreme Court approving the interpretation here asserted by the defendants. In every case decided by that tribunal, and they are many, it has been uniformly held that every other section of the Constitution providing for restrictions upon the power of Congress must be given full force and effect, and that no legislation may be enacted by Congress levying taxes for other than public purposes, and that such purposes must be those of the general government and not the public purposes of a state or any political subdivision or community thereof. Congress may not legislate either for the establishment or the support of such local enterprises under the guise of general welfare. To permit this to be done would be to destroy the barriers provided in specific sections of the Constitution against Congressional encroachment upon states' rights and local self-government. In Collector v. Day, 78 U. S. (11 Wall.) 113, 124, 20 L. Ed. 122, the Court said:

"It is a familiar rule of construction of the Constitution of the Union, that the sovereign powers vested in the State governments by their respective constitutions, remained unaltered and unimpaired, except so far as they were granted to the government of the United States. That the intention of the framers of the Constitution in this respect might not be misunderstood, this rule of interpretation is expressly declared in the tenth article of the amendments, namely: 'The powers not delegated to the United States are reserved to the States respectively, or, to the people.' The government of the United States, therefore, can claim no powers which are not granted to it by the Constitution, and the powers actually granted must be such as are expressly given, or given by necessary implication."

In Kansas v. Colorado, 206 U. S. 46, 90, 27 S. Ct. 655, 51 L. Ed. 956, Mr. Justice Brewer, referring to the Tenth Amendment, said that it "disclosed the widespread fear that the National Government might, under the pressure of a supposed general welfare, attempt to exercise powers which had not been granted. With equal determination the framers intended that no such assumption should ever find justification in the organic act, and that if in the future further powers seemed necessary they should be granted by the people in the man-

(147) ner they had provided for amending that act." Even in passing upon those cases arising under state constitutions, the Supreme Court has been careful to ascertain whether taxation challenged as unconstitutional could be properly designed to be for a public purpose and justified under such claim, and when found not to be so, the right has been uniformly denied as unauthorized invasion of private right. In Loan Association v. Topeka, 87 U. S. (20 Wall.) 655, L. Ed. 455, the Court said: (P. 663.)

"The theory of our governments, State and National, is opposed to the deposit of unlimited power anywhere. The executive, the legislative, and the judicial branches of these governments are all of limited and defined powers. There are limitations on such power which grow out of the essential nature of all free governments. Implied reservations of individual rights, without which the social compact could not exist, and which are respected by all governments entitled to the name."

The Court held that among these is the limitation of the right of taxation; that it can only be used in aid of a public object, an object which is within the purpose for which governments are established; that it cannot, therefore, be exercised in aid of enterprises strictly private, for the benefit of individuals, though in a remote or collateral way the local public may be benefitted thereby; that though the line which distinguishes the public use for which taxes may be assessed from the private use for which they may not, is not always easy to discern, yet it is the duty of the courts, where the case falls clearly within the latter class, to interpose when properly called on for the protection of the rights of the citizen, and aid to prevent his private property from being unlawfully appropriated to the use of others. This case quotes with approval the decision in McCulloch v. Maryland, 4 Wheat. 431, to the effect that the power to tax is the power to destroy, being "the strongest, the most pervading of all the powers of government, reaching directly or indirectly to all classes of the people." See, also, Parkersburg v. Brown, 106 U. S. 487, 1 S. Ct. 442. In Allen v. Jay, 60 Me. 124, 11 Am. Rep. 185, the Court said: "Taxation, by the very meaning of the term, implies the raising of money, for public uses, and excludes the raising if for private objects and purposes." See, also, Cole v. City

(148) of LaGrange, 113 U. S. 1, 5 S. Ct. 416, 28 L. Ed. 896; Fallbrook Irrigation District v. Bradley, 164 U. S. 112, 17 S. Ct. 56, 41 L. Ed. 369; Dodge v. Mission Township, 107 Fed. 827; Sharpless v. Mayor, etc., 21 Pa. 147. In the last mentioned case the Court, at Page 169, said:

"Taxation is a mode of raising revenue for public purposes. When it is prostituted to objects in no way connected with the public interests or welfare, it ceases to be taxation, and becomes plunder. Transferring money from the owners of it into the possession of those who have no title to it, though it be done under the name and form of a tax, is unconstitutional for all the reasons which forbid the legislature to usurp any other power not granted to them."

In Dodge v. Mission Township, supra, the Court said:

"A legislature cannot make a private purpose a public one by its mere fiat, and the determination of the question in any case whether or not a given object is public or private is a judicial, and is not a legislative, function."

In Amazon Petroleum Corporation v. Railroad Commission, (DC Tex.), 5 F. Supp. 639, 647-8, the Court quoting argument made by counsel now Mr. Chief Justice Hughes, in 1926, said:

"I am aware that it has been suggested that such Federal power to control production within the states might be asserted by Congress because it could be deemed to relate to the provision for the common defense and the promotion of the general welfare. * * * Reference is sometimes made in support of this view to the words of the preamble of the Federal Constitution. But as Story says 'The preamble never can be resorted to enlarge the powers confided to the general government or any of its departments. It cannot confer any power per se; it can never amount, by implication, to an enlargement of any power expressly given.'"

The Court calls attention to the fact that this statement was approved by the Supreme Court in Jacobson v. Massachusetts, 197 U. S. 11, 22, 25 S. Ct. 358, 49 L.

(149) Ed. 643, 3 Ann. Cas. 765. Continuing the quotation, the Court says:

"The suggestion to which I have referred is an echo of an attempt to construe Article 1, Section 8, subdivision 1 of the Constitution of the United States, not as a power 'to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States', but as conferring upon Congress two distinct powers, to-wit: (1) the power of taxation and (2) the power to provide for the common defense and the general welfare. In this view, it has been urged that Congress has the authority to exercise any power that it might think necessary or expedient for the common defense or the general welfare of the United States. Of course, under such a construction the government of the United States would at once cease to be one of enumerated powers and the powers of the states would be wholly illusory and would be at any time subject to be controlled in any matter by the dominant Federal will exercised by Congress on the ground that the general welfare might thereby be advanced. That, however, is not the accepted view of the Constitution. (1 Story on the Constitution, secs. 907. 908; 1 Willoughby on the Constitution, sec. 22.) The government of the United States is one of enumerated powers and is not at liberty to control the internal affairs of the states respectively such as production within the States, through assertion by Congress of a desire either to provide for the common defense or to promote the general welfare."

The views above expressed are uniformly sustained and amplified not only in other parts of the opinions quoted, but also in numerous other decisions of the Supreme Court. We deem it unnecessary to prolong the opinion by reference to a number of able opinions recently handed down by District Courts in cases analogous to the instant case, presenting the same view. While there are some decisions to the opposite effect, we regard them in conflict with the established law of the land.

It remains only, therefore, necessary to refer briefly to defendants' contention that, by acquiescence and

(150) failure to question the constitutionality of numerous acts of Congress, making appropriations for such purposes as the purchase of the territory of Louisiana and of Florida, (unquestionably a national public purpose); the transfer of Federal Lands to the States, (not involving taxation for the purpose of purchasing the lands, but merely appropriations to administer properties already owned by the Government, and of which it had the right to dispose); continued appropriations in aid of agriculture and education; distribution in Jackson's day of Federal surplus among the States, (which did not involve the question of right of taxation); the establishment of various public bureaus, etc. We think it a sufficient reply to this contention to say that the right of a citizen, or of a state acting on behalf of its citizens to maintain as a justiciable controversy a suit, under claim of taxpayers' rights alone, to enjoin enforcement on the ground of the unconstitutionality of a statute, in each case indicated, is specifically denied by the decisions hereinbefore cited. In no case, so far as we are advised, has it been shown that the citizen elected to forego a contest in which he had a justiciable controversy. Whatever inference of acquiescence, therefore, may be drawn from failure to contest appropriations in the cases cited by counsel must be limited to that class of cases. The active and successful resistance to unconstitutional encroachments, such as are involved in the instant case, not only appears from the cases above reviewed, but from a vast number of others, all forming a line of unbroken and almost continuous contests. So far, we have limited this discussion principally, if not exclusively, to citations upon the exact issue presented. It is significant to note, however, that in the jealous guarding of the positive rights guaranteed by the Constitution, no exception has ever been made for the purpose of promoting the general welfare. When the majority of the people became convinced that slavery was an evil so great that the general welfare of the country demanded its abolition, nevertheless it was found necessary to accomplish that purpose, not by a legislative enactment, but by the adoption of the Thirteenth Amendment following the arbitrament of war. It has been held that, without a constitutional amendment, Congress may not regulate or abolish child labor, though the products manufactured thereby are intended to be used in interstate commerce

(151) Congress had no power, *under the general welfare clause,* to prohibit the traffic in intoxicating liquors, nor to provide punishment for abuses thereof, until the adoption of the Eighteenth Amendment, prior to which its only powers were based upon the revenue laws, under which laws alone it is likewise permitted to regulate the traffic in opium. The general welfare clause did not authorize Congress to deal with the evils of white slavery, or motor vehicle thefts, or stealing from transportation companies, outside of the authority given under the commerce clause of the Constitution. While these matters were not expressly forbidden to Congress, in such positive language as related to property rights, right of free speech, protection from unreasonable search and seizure, etc., it was conclusively presumed that they came within the rights reserved to the states or to the people. We fail, therefore, to see the force of the argument that the rights here sought have been lost by acquiescence, against the fact that the same or similar rights have been so persistently asserted and so emphatically proclaimed by the Supreme Court. If and when the power of the Government to the unlimited expenditure of money in the establishment of bureaus is questioned in a proper case, a different question may be presented. It is enough to say that the Act here questioned, as applied to the facts of this case, extends the taxation and appropriating powers of Congress to an extent heretofore undreamed of, and that, in our judgment, the right to challenge has not been lost by previous acquiescence in any governmental policy. That many of the provisions of the Act in question are constitutional is not here, and cannot be successfully, questioned. The power of Congress in its discretion to provide any unlimited amount, however extravagant, for the construction of necessary or proper public building, to support the army and navy, to provide for post offices and post roads, to exercise control over interstate commerce, to appropriate whatever funds it may find advisable therefor, and to tax for the maintenance of its governmental activities generally, even though the purpose of the act be largely to relieve unemployment and to increase the spending power of the people, is not subject to review. So long as Congress legislates within the delegated powers outlined in the Constitution, neither its power nor discretion may be reviewed by

(152) the courts. We think it pertinent here to remark that the field and the need for public appropriations have not yet been fully covered. The recognized lack of public buildings at Anderson and Greenwood furnishes apt illustration.

While personally entertaining no reasonable doubt as to the correctness of the foregoing conclusions, we take satisfaction in the assurance that whatever, if any, errors have been committed, are subject to correction, and will, on appeal, be corrected by the Courts of last resort, by whose decisions not one but all guaranties of our liberties must be preserved and defended against all enemies "foreign and domestic".

An appropriate order will be filed in accordance with the views hereinabove expressed.

(s) H. H. WATKINS,
United States District Judge.

Greenville, S. C.,
April 23, 1935.

ORDER.

Filed April 29, 1935.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF SOUTH CAROLINA.
EQUITY 451.

Duke Power Company and Southern Public Utilities Company, Plaintiffs,

vs.

Greenwood County and E. L. Brooks, S. A. Agnew and E. I. Davis, as members of and constituting The Finance Board of Greenwood County, and Harold L. Ickes, as Federal Emergency Administrator of Public Works, Defendants.

(153) THIS CAUSE came on to be further heard at this term on the motions of the defendants to dismiss the original bill of complaint as amended by the supplemental bill, and was argued by counsel; and thereupon, upon consideration thereof and on the facts found and the conclusions of law stated in the opinion filed herein on April 23, 1935, it was Ordered, Adjudged and Decreed that the motions by the defendants to dismiss this action be, and the same hereby are, overruled.

It was further Ordered that the defendants, Greenwood County and E. L. Brooks, S. A. Agnew and E. I. Davis, as members of and constituting The Finance Board for Greenwood County, be, and they hereby are, allowed 5 days within which to file an answer to the amended and supplemental bill of complaint.

It was further Ordered that W. M. Walters, of Anderson, S. C., be, and he hereby is, appointed Special Master to take such evidence in the cause as the parties may desire to introduce and to report same to the Court.

This 29th day of April, 1935.

(sd) H. H. WATKINS,
United States Judge.

ANSWER OF GREENWOOD COUNTY AND ITS FINANCE BOARD TO THE AMENDED AND SUPPLEMENTAL BILL OF COMPLAINT.

Filed April 29, 1935.

(Style of Court and Title Omitted.)

The defendants, Greenwood County and The Finance Board for Greenwood County, reserving their rights under a motion to dismiss heretofore filed in this case, answering the amended and supplemental bill of complaint:

1. Admit the allegations of paragraph I of the amended and supplemental bill of complaint.

(154) 2. In answer to the allegations of paragraph II these defendants admit that the copy of the loan and grant agreement attached to the original answer of Harold L. Ickes, Administrator, is a correct copy of the agreement between the County and the United States; and admit that Greenwood County's Finance Board has executed a revised resolution as attached to the original answer of these defendants in this cause.

3. These defendants, on information, advice and belief, deny the allegations of paragraph III.

4. In answer to the allegations of paragraph IV, on information, advice and belief, these defendants deny the same.

5. In answer to the allegations of paragraph V these defendants admit, on information and belief, that the plaintiffs are electrical public utility corporations, and that certain of their rates are subject to the jurisdiction of the Railroad Commission of South Carolina. These defendants deny that the plaintiffs are engaged exclusively in the intrastate sale and distribution of electrical power and energy, but aver that their operations are also interstate in character. These defendants deny, on information and belief, that the plaintiffs are adequately serving the territory embraced in Greenwood, Newberry and Laurens Counties.

6. In answer to the allegations of paragraph VI these defendants, on information, advice and belief, deny the allegations thereof.

WHEREFORE having fully answered these defendants ask that the complaint as amended and supplemented be dismissed.

W. H. NICHOLSON,
R. F. DAVIS,
ROBINSON & ROBINSON,
Attorneys for Greenwood County and its Finance Board.

February 19, 1935.

(155) State of South Carolina,
County of Greenwood.

E. I. Davis, being first duly sworn, says:

That he is one of the defendants in the above entitled action; that he has read the foregoing answer to the amended and supplemental bill of complaint, and the same is true of his own knowledge, except as to matters therein stated on information and belief, and those he believes to be true.

E. I. DAVIS.

Sworn to before me this 29th day of Apr., 1935.

W. M. WALTERS, (L. S.)
Notary Public for S. C.

SEPARATE ANSWER OF DEFENDANT HAROLD L. ICKES, AS FEDERAL EMERGENCY ADMINISTRATOR OF PUBLIC WORKS, TO THE AMENDED AND SUPPLEMENTAL BILL OF COMPLAINT.

Filed February 15, 1935.

(Style of Court and Title Omitted.)

To the Honorable Henry H. Watkins, Judge of the District Court of the United States for the Western District of South Carolina:

Harold L. Ickes, as Federal Emergency Administrator of Public Works, answering the amended and supplemental bill of complaint herein, states:

I. Defendant admits the allegations of paragraph I of the amended and supplemental bill of complaint.

II. Defendant admits that a copy of the "loan and grant agreement" executed by and between the defendant Greenwood County and the United States of America was attached to the answer of this defendant to the original bill of complaint herein and marked "Exhibit

(156) "A", and avers that said agreement is the only such agreement that has been executed by and between said County and the United States. Defendant admits that a copy of the resolution adopted by the Finance Board of the defendant Greenwood County providing for the issuance of the bonds described in said agreement was attached to and made a part of the answer of said defendant County and the members of its Finance Board.

III. Defendant denies each and every material allegation contained in paragraph III of the amended and supplemental bill of complaint.

IV. Defendant denies each and every material allegation contained in paragraph IV of the amended and supplemental bill of complaint.

V. Defendant has no knowledge as to the allegations contained in paragraph V of the amended and supplemental bill of complaint.

VI. Defendant denies each and every material allegation contained in paragraph VI of the amended and supplemental bill of complaint.

WHEREFORE, this defendant prays judgment that both the original bill of complaint and the amended and supplemental bill of complaint of the plaintiffs herein be dismissed.

HENRY T. HUNT,
as Special Assistant to the Attorney General, Attorney for the defendant Harold L. Ickes as Federal Emergency Administrator of Public Works.

Dated, Washington, D. C.,
February 12, 1935.

(157) **STATEMENT OF EVIDENCE.**

PART I.

STATEMENT OF EVIDENCE UNDER EQUITY RULE NO. 75

(Style of Court and Title Omitted.)

Be it remembered that the above entitled cause came on regularly for trial before the above court, sitting in Equity, on the 19th day of July, 1933, upon the issues formed by the Bill of Complaint, as amended, and the answers thereto, W. S. O'B. Robinson and H. J. Haynesworth appearing as counsel for the plaintiffs, and D. W. Robinson, W. H. Nicholson, and R. F. Davis, appearing as counsel for the defendants.

Pursuant to the order of reference hearings were held before the Referee, W. M. Walters, Esq., on June 12, 13, 14, 15, 17 and 19, 1935, and the following evidence was taken to-wit:

EVIDENCE FOR THE PLAINTIFF.

J. N. STRIBLING, a witness for the plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

I am employed by the Duke Power Company in the capacity of civil engineer. I was educated as a civil engineer at Princeton College and have practiced that profession for 20 years. I have made a survey of the proposed Buzzard Roost dam of Greenwood County for the purpose primarily, of determining how the water which would be impounded by that dam would affect structures above the dam and have prepared maps showing the result of that survey. The data for elevations were taken from bench marks shown on Exhibit K-1 attached to Greenwood County's application to the Federal Power Commission.

The plans of the County for their Buzzard Roost

(158) project show that the normal water level will be at elevation 440 and that the maximum flood water level will be at elevation 447. I have determined and shown on the maps which I have prepared where these elevations 440 and 447 would come on the structures in reference to which I have made surveys, namely the Duke Power Company transmission line over the Saluda River, the Seaboard Railway bridges over the Saluda River, and Cane Creek, the Cothran Highway Bridge over the Saluda River, and the C. & W. C. Railway bridge over the Saluda River.

The Duke Power Company transmission line is about 4 miles up the river from the proposed dam site. As a result of the impounding of water by the Buzzard Roost project, with the water level at 440, 17 towers of this line would be partly submerged, and, with the water level at elevation 447, 18 towers would be partly submerged. With the water raised to elevation 440, the maximum height at which any of these towers would be submerged is about 45 feet. That would put the water above the lower cross arm of the tower. With the water level raised to elevation 447, the maximum height at which these towers would be submerged would be 52 feet. That would put the water almost to the second cross arm or middle cross arm. There are transmission wires on each of these cross arms.

The C. & W. C. Railway bridge is located about 14½ miles up the river from the proposed Buzzard Roost dam site. This bridge is composed of two steel trusses which support the track over the main channel of the river. These trusses are supported by three stone masonry piers. On each side of the river there are wooden trestles, that on the north side being about 600 feet long and the one on the south side of the river about 200 feet long and about 30 feet high. Approaching each of these wooden trestles there is an earth fill. If the water should be raised to elevation 440 the piers would be completely submerged, the water being two feet over the top of the piers, the bottom cord or low steel of the trusses would be submerged two-tenths of a foot, the wooden trestles would be submerged to within about one foot of the bottom of the cap and the earth fill approaches would be submerged on both sides to within about four feet of the base of the rail. As shown by the broken blue line

on the map, which is plaintiff's exhibit 2, at elevation
(159) 447 the water would completely submerge the trusses, the wooden trestles, the earth fill, and the track.

I have not undertaken to show exactly where the water would come on these structures if the water was raised to 440 or 447 at the dam inasmuch as I have not taken into consideration the fall there would be between the railroad and the dam.

The Seaboard Railway crossing over the Saluda River is composed of three steel plated girders on two concrete piers. On each side of these girders there is a wooden trestle, the one on the south side of the river being about 600 feet long and the one on the north side about 200 feet long. Approaching each of these trestles there is an earth fill, the fill on the south side being about 800 feet long and the one on the north side about 450 or 500 feet long. If the water were raised to elevation 440, the top of the piers would be submerged two and three-tenths feet, the steel girders would be submerged to about the same extent as they rest directly on top of the piers, the trestle approaches would be submerged to within about one foot of the bottom of the caps and the earth fill approaches would be submerged to within about four feet of the base of the rail. With the water at elevation 447 it would come about six feet over the trestle. The steel and timber approaches and the north earth fill approach would be completely submerged and the south earth fill approach would be completely submerged at the end of the trestle.

The Seaboard has a wooden crossing at Cane Creek with an earth fill on each end. If the water were raised to elevation 440, the wooden trestle would be completely submerged, the earth fill on the south would be completely submerged for about 2,000 feet and the earth fill on the north for practically the length of the fill or about 300 feet. With the water at elevation 447 both the wooden trestle and the earth fill approaches would be completely submerged.

The Cothran Highway Bridge over the Saluda River is composed of a steel truss span over the river proper, supported on concrete piers, with concrete approaches. The highway is a concrete paved road. With the water at elevation 440, the water would be three and one-tenths feet below the bottom of the steel trusses and at elevation

447 the surface of the highway would be completely submerged.

(160) The cross arms on the transmission line of the Duke Power Company carry the wires commonly referred to as conductors. These wires are swung on insulators below the cross arms. With the water raised to elevation 440 or 447 it would submerge these conductors.

CROSS EXAMINATION.

I got the water levels from sheet, P. S. 106, furnished to the plaintiffs by Greenwood County. This sheet is a drawing showing a section of the proposed power house. The drawing shows the normal headwater elevation 440 and under flood conditions a 7 foot surcharge on headwater. There is no 447 on the map. The elevation 447 is my conclusion from that statement on the map. I do not know whether the water of this dam will ever get to 447. My sketches are based in part upon the assumption that the water level would reach 447 and I have shown that elevation upon the sketches.

I stated that at elevation 440 one of the towers of the Duke Power Company would be submerged to a depth of 45 feet. The other towers of the Duke Power Company would be submerged to a varying depth. The ground is not level under the tower line.

The 440 level would be four feet below the rail on the Seaboard Bridge; it would be four and four-tenths feet below the rail on the C. & W. C. Bridge; it would be six and nine-tenths feet below the traveling surface of the Cothran Highway Bridge.

RE-DIRECT EXAMINATION.

At elevation 440 the water would be four and one-tenth feet below the low point of the highway on the Cothran Highway Bridge. At that elevation it would be about three feet below the low point of the approaches and about six and a half or seven feet below the high point of the approaches.

(161) J. E. WILLOUGHBY, a witness for the plaintiff being duly sworn, testified as follows:

DIRECT EXAMINATION.

I am a civil engineer and have been practicing my profession since 1887 or almost 48 years. I am chief engineer of the Atlantic Coast Line Railroad Company and have been for about 20 years. I am also chief engineer of the Charleston and Western Carolina an affiliated road and have been for about 3 years. My work during the 48 years I have been practicing my profession has related almost exclusively to railroad engineering.

The C. & W. C.'s. main stem extends from Spartanburg, S. C., through Augusta, Ga., to Port Royal, S. C. Its traffic is largely coal from the Virginia coal fields, merchandise traffic from the central west and it also handles a good bit of perishable products from South Carolina and Florida. It connects at Spartanburg with the Clinchfield, the Southern and the Piedmont and Northern Railroads. The Clinchfield is one of the least lines of the Atlantic Coast Line system. It connects at Augusta with the Georgia Railroad, the Georgia and Florida Railroad, Central of Georgia and Southern Railroad. It connects with the Coast line at Augusta, Ga. and at Yemassee, S. C. The C. & W. C. is part of the through route to the middle west and the Clinchfield is part of the main stem of the C. & W. C.

I am familiar with the crossing of the C. & W. C. over the Saluda River above the proposed Buzzard Roost dam site. The C. & W. C. Bridge consists of two truss spans, of 127 feet length each, over the channel of the river, two trestle approach spans aggregating 825 feet and a short earth fill at each end of the wooden trestle approaches. With the water at elevation 447 the water would be above the top rail of the C. & W. C. for the entire length of the bridge and its approaches. At 440 elevation the water would be in contact with the bottom cord of the steel span, one foot below the bottom of the cap and would come very near to the top of the fills. It would be four feet below the base of the rail.

If this dam should be constructed by the County it would be necessary to raise the track, if the C. & W. C.

(162) is to continue to operate in flood times. In order to prevent overflow it would be necessary to raise the track from one hillside to the other hillside in advance of possible floods. The track that is now on the trestle would have to be raised and in order to make a safe job some other form of construction that would not require annual repairs would have to be substituted for the trestle approaches. The form of construction that would work most economically would be concrete piers and steel girders. As the trestle would be under water they would have to be repaired annually. In fact, no repairs could be made on the trestle while water is there. The trestle is of such height that it is necessary to have longitudinal cross bracing to operate at ordinary speed. The earth fill approaches would have to be raised above high water too and the slopes would have to be flattened. In addition to the flattening it would be necessary to [illegible] the slopes against the water action. The flattening is necessary to prevent the fill from being saturated and sloughing. The earth fill as we have in South Carolina will stand in the dry one and one half on one; in the water it will stand three on one. Sometimes it will stand a little steeper but three on one is prudent engineering on fills. If you raise the approach to provide a 447 elevation you would have to raise it 11 feet.

I have made an estimate of the cost of making the required changes in the C. & W. C. bridge so as to provide a structure insuring safety to the traffic of the C. & W. C. providing there is no flood in excess of 445. That estimate is $260,000.00. It consists of raising the approach fill, replacing the defects in the track that result from the raising, the replacing of cross ties, track fastenings, ballast, toe wall for fill, paving for fills in water in the amount of $80,375.00. Construction of 840 lineal feet of deck plate girder spans on plain concrete piers, including excavation, foundation piles, concrete, placing the steel spans, placing of wooden deck on steel spans, painting of steel spans, raising of present track, and additional piles and caps, in the amount of $111,095.00. Raising the two existing steel truss spans 9 feet, which includes the blocking, steel grillages, foundation piles, reinforced concrete pier jackets, labor raising span, and construction of 5½' run-off at each end of truss spans in the amount of $38,025.00. For miscellaneous and other costs such as delays to trains, supervision of the rail-

(163) road company and telegraph service, in the amount of $10,000.00. For engineering and contingencies $20,505.00. Making a total of $260,000,00. This expense of $260,000.00 would be necessary to make the C. & W. C. bridge over the Saluda River reasonably safe for operation.

Sometime ago we had a request for an estimate upon certain changes in this bridge. On November 10, 1933, Mr. Duncan wrote to Mr. L. S. Jeffords, Superintendent, that the County of Greenwood planned to build a dam across the Saluda River about 15 miles below the C. & W. C. bridge across the Saluda River. (This letter was admitted in evidence as Plaintiffs' Exhibit No. 6 and is hereto attached.) This letter was referred to me individually and I replied to Mr. Duncan on November 14, 1933. I made an estimate of the cost of raising this bridge and sent this estimate to Mr. Duncan with my letter. (This letter was admitted in evidence as Plaintiffs' Exhibit No. 7 and the estimate referred to in the letter as Plaintiffs' Exhibit No. 8, both of which are hereto attached.)

In making reply to Mr. Duncan and in giving him the information contained in that estimate, I did not make any examination of the County's proposed dam or where the water would come on the C. & W. C. Bridge or how the dam affects the bridge. The only information we had was that contained in Mr. Duncan's letter. We made an estimate to raise the track and the approaches four and one-tenth feet above the existing level and nine and one-tenth feet above the existing level. We made no estimate for protection against flood damage, sloughing or other features. At that time I did not make any estimate of what it would cost to substitute this trestle. I made such an estimate afterwards and furnished it to Mr. Duncan. The estimate sent Mr. Duncan with my letter of November 14, 1933, did not take into consideration any changes that would have to be made on the earth fill approaches. I gave him simply the information he requested as to raising the existing structures the number of feet referred to and nothing more.

CROSS EXAMINATION.

I am a civil engineer and not a hydraulic engineer. The C. & W. C. bridge over the Saluda River was built

(164) before the year 1913 as in that year I came here from North Carolina and the bridge was then in existence. I do not know at what valuation this bridge is carried on our books.

The Interstate Commerce Commission made an estimate of the cost of reproduction of that bridge which estimate was protested in a hearing before the Commission. The Commission stuck to their values after the Supreme Court said that no use can be made of these values until some attempt is made to get money or take property. (By agreement of counsel it was stipulated that the plaintiffs object to each question and answer relating to this subject.) The paper which you handed me is a purported valuation by the Interstate Commerce Commission reads: "Total bridge cost of reproduction $45,688.00. Cost of reproduction less depreciation $34,775.00."

I said that the information which I furnished with my letter of November 14 to Mr. Duncan was based upon the statements contained in Mr. Duncan's letter of November 10th. I do not know whether the information furnished in Mr. Duncan's letter is true or not. I have not checked his information. Mr. Duncan asked me for estimates upon raising the bridge four and one-tenth feet and nine and one-tenth feet and the estimates which I furnished with my letter of November 14 were estimates for raising the bridge itself, the trestle, and the fills to those heights. Those are the three portions of the roadbed that would have to be raised. The estimates do not call for the same kind of bridge that is there now. The request calls for raising the bridge vertically. When the bridge is raised vertically it would not be the same kind of bridge because there would be some elements of hazzard. The C. & W. C. connects at Spartanburg with the Piedmont and Northern. We have a physical connection there, but they are competitors and the competition has been such that they have been engaged in law suits. I knew nothing about the project which the County proposed to undertake and knew nothing about the estimate required except what is stated in Mr. Duncan's letter of November 10th.

After I had given Mr. Duncan this estimate in 1933 Mr. Monroe Johnson and Mr. Roberts came to see me. They represented the Duke Power Company. After Mr. Johnson and Mr. Roberts had a conference with me, in

(165) response to the request from Mr. Johnson for an estimate of what the C. & W. C. would prudently require, we made the estimate of $260,000.00, and furnished copies to Mr. Duncan. The structure considered in this estimate will be permanent so far as the structural approach is concerned. It will not be so good as the present structure so far as the earth approach is concerned or the truss span. This estimate calls for the substitution of steel spans instead of wooden trestle work such as we now have. The reason is that a wooden trestle span with water at elevations 440 and 447, I believe, would be a hazardous condition for the railroad company to maintain. We do not interpret our duty to the public to mean that we should turn over our property for maintenance, so we must have the right to maintain our bridge as and when it needs it, when economic conditions permit and when we have the opportunity to do the work. The answer to your question as to whether we have an opportunity to make repairs if there is a 25-foot drawdown from the 440 normal level is "no" and being "no" it would not be wholly true because when the water was drawn down an inspector could look at the trestle, but the force may not be available for making repairs or materials may not be available and it might not be economical to do so. It could not be done except at greater cost. It would involve the reconstruction of the trestle so such could be done. Furthermore, when timbers are subject to saturation the timbers become soft and the need for inspection becomes so much greater. If the pond is down 25 feet the trestle could be inspected but so long as the trestle is in other hands it would be imprudent for the railroad to maintain it on somebody else's drawdown. I think railroads do have trestles over hydraulic ponds.

RE-DIRECT EXAMINATION.

Mr. Johnson and Mr. Roberts came to see me and stated they were in the employ of the Duke Power Company. They asked me to make an estimate of what the C. & W. C. ought to require if the project should be built. The estimate which I made in response to that request was $260,000.00.

After I made the estimate of $260,000.00 I had certain communications by letter and verbally with Mr. Duncan and he requested me to make certain other esti-

(166) mates for him upon specific things which he requested. These estimates embraced and covered the specific changes referred to in Mr. Duncan's request. In my letter to Mr. Duncan of February 1, 1935, I made an additional estimate for Mr. Duncan. (This letter was introduced in evidence as Plaintiffs' Exhibit No. 9 and a copy thereof is hereto attached.)

The estimate of $260,000.00 is the estimate I made on the part of the C. & W. C. Railroad for a safe bridge under the conditions named, that is, not more than a 5 foot flood or 440 elevation at the dam site. If there should be more than a 5 foot flood, as for example, a 7 foot flood, the estimate would be increased something like 5 or 10%. It would be increased because the piers would be somewhat higher, the fills would be somewhat higher, and there would probably be a little more material in the piers. If there should be less than a 5 foot flood, the estimate would be somewhat decreased.

RE-CROSS EXAMINATION.

On February 4, 1935, I sent Mr. Duncan the cost of raising the bridge 4 feet, filling in 180 feet of trestle, and replacing the remainder of the trestle with steel girders supported with masonry piers with provision for 10 feet future raise of bridge. The estimate's total was $189,000.00. On February 2, 1935, I gave Mr. Duncan an estimate of the cost to raise the grade of the Saluda River crossing 4 feet, fill 180 feet present trestle, replace the rest with steel 60 foot spans, raise present truss spans, pave two to one slopes with 12" of riprap, hand laid, aggregating $155,500.00; and an estimate to raise the grade 4 feet, present trestle replaced by creosoted ballast deck trestle, raise present truss span, pave two to one slopes with 12" of riprap, hand laid, aggregating $94,500.00. The $189,000.00 estimate was to raise the grade 4 feet making provision for a future raise of 10 feet. The piers would be of such strength that you could raise it up 10 feet or more.

On November 14, 1933, I gave Mr. Duncan an estimate to raise the structure 9.1 ft. at $80,930; 4-1/10 ft. $21,870. This $260,000 estimate is a 9 ft. raise.

RE-DIRECT EXAMINATION.

These estimates of $189,000.00, $155,500.00, $94,-

(167) 500.00, and $80,930.00 about which I have just been examined were made for Mr. Duncan as estimates of the cost of doing the specific things that, Mr. Duncan asked me to make estimates on. On none of those estimates did I make an estimate of the cost necessary to make the track reasonably safe. The $260,000.00 estimate is my estimate of the cost of making the railroad reasonably safe for a 5 foot flood level superimposed on the 440 elevation. (The $260,00.00 estimate was admitted in evidence as Plaintiffs' Exhibit No. 10 and is hereto attached.)

RE-CROSS EXAMINATION.

As to what bridge they desire to build in case this project goes through the C. & W. C. executive officers have not been approached.

E. C. MARSHALL, a witness for the plaintiffs, being duly sworn, testified as follows:

DIRECT EXAMINATION.

I am President of the Southern Public Utilities Company of Maine, and Vice-President of the Duke Power Company. I became connected with the Duke System in 1907, and have been continuously connected since then. I was first Auditor of the Southern Power Company, which position I continued until 1911, at which time I was made Assistant Secretary of the Company. I continued as Assistant Secretary until 1921. In 1913, the Southern Public Utilities Company was organized, and I was Treasurer of the Southern Public Utilities Company until 1921, at which time I became President. The Southern Power Company was the original company that was incorporated, and after that it was consolidated into the Duke Power Company—one of the nucleuses of the Duke Power System. I have prepared a statement accurately and correctly setting forth the facts.

The Duke Power Company is a corporation organized and existing under the laws of the State of New Jersey. It is duly domesticated in the State of South Carolina and authorized to conduct its business as a

(168) public utility in that state. The Southern Public Utilities Company, one of the plaintiffs in this suit, is a corporation organized under the laws of the Staee of Maine. It is also domesticated in the State of South Carolina and authorized to do business as a public utility in this state. Since the institution of this suit there was organized under the laws of the State of New Jersey, the Southern Public Utilities Company of New Jersey, with the same corporate powers and capitalization as the Southern Public Utilities Company of Maine. The Maine Company transferred all of its property, assets and business to the New Jersey corporation as of the close of business of March 31, 1935, and the New Jersey corporation assumed all of the debts, liabilities and obligations of the Maine corporation. Thereafter, on May 1, 1935, the Southern Public Utilities Company of New Jersey was merged with the Duke Power Company. So that now the Duke Power Company owns all of the property assets and business, rights and franchises which were owned by the Southern Public Utilities Company at the time of the institution of this suit, and is liable for all of the debts and obligations of the Southern Public Utilities Company. The Southern Public Utilities Company was reorganized as a New Jersey corporation in order that both it and the Duke Power Company might be organized under the laws of New Jersey and then the two companies merged. This reorganization and merger was approved by the South Carolina Railroad Commission, now known as the South Carolina Public Service Commission, and also by the North Carolina Public Service Commission.

Since this suit was instituted prior to the merger, I shall refer to the two companies and their business as they existed at the time of the institution of this suit. Both the Duke Power Company and the Southern Public Utilities Company were engaged in business as public utilities in South Carolina at and prior to the time of the passage by the General Assembly of that state of Act 871, entitled, "An Act Regulating Persons, Corporations and Municipalities engaged in the Generating, Transmission, Delivery and Furnishing of Electricity for Light, Heat and Power," prescribing the duties of the Railroad Commission in relation thereto and prescribing penalties for violation of the provisions thereof, approved April 8, 1932, and had been engaged in such business for a

(169) number of years prior to the passage of said Act, and have continued in such business ever since its passage. Before the merger of the Southern Public Utilities Company with the Duke Power Company the latter company owned all of the stock of the Southern Public Utilities Company of Maine, and also acquired all of the stock of the Southern Public Utilities Company of New Jersey on its organization. The two companies are usually referred to as Duke Power System, the Southern Public Utilities Company being the wholly owned subsidiary of Duke Power Company. Duke Power System is now, and for a number of years past has been, engaged in the business of furnishing electric light and power service to cities, towns and municipalities, to the residents and industrial enterprises in York, Cherokee, Spartanburg, Greenville, Pickens, Oconee, Anderson, Chester, Laurens, Newberry, Lancaster, Abbeville, Greenwood and Kershaw Counties in South Carolina. In connection with this operation it owns franchises for the conduct of its business in a large number of cities and towns in this state, namely, Anderson, Blacksburg, Calhoun, Campobello, Central, Chesnee, Chester, Clover, Cowpens, Cross Hill, Duncan, Easley, Edgemoor, Fountain Inn, Gaffney, Gray Court, Greenville, West Greenville, Greer, Hickory Grove, Hodges, Honea Path, Inman, Iva, Landrum, Laurens Liberty, Mauldin, Mountville, Newberry, Norris, Pacolet, Pendleton, Pickens, Princeton, Richburg, Reidville, Rock Hill, Sharon, Six Mile, Simpsonville Spartanburg, Union, Walhalla, Waterloo, Wellford, West Union, Whitmire, Woodruff, York, and Yorkville. All these franchises are in court.

In addition to these cities and towns, Southern Public Utilities Company prior to the merger operated, and Duke Power Company now operates, as an electric utility in a large number of unincorporated communities and rural sections. Also, Southern Public Utilities Company formerly operated, and now since the merger Duke Power Company operates, gas, street railway and water utility systems in various cities and towns in the state. In the three Counties of Greenwood, Newberry and Laurens, the Duke Power System owns franchises in the folowing cities and towns: Town of Whitmire, Town of Hodges, City of Laurens, Town of Cross Hill, Town of Waterloo, Town of Mountville, Town of Princeton, City of Newberry and Town of Gray Court. Prior to

(170) the merger the business of Duke Power Company proper was confined very largely to that of an electric generating and transmission company its business being generally limited to the furnishing of power service to industries, municipalities and other utilities, and the major business of the Southern Public Utilities Company was to furnish electric service to residential, commercial and small power users, and to conduct street railway, gas and water utilities service. The Southern Public Utilities Company generated a portion of its electric power, but most of the power which it distributed was delivered to it by the Duke Power Company at different points over the territory. Now, since the merger, the entire business is, of course, conducted by the Duke Power Company. The business of the system extends over what is known as the Piedmont Section of North and South Carolina. (A map showing the transmission system and generating system of the Duke Power System in North and South Carolina was introduced in evidence as Plaintiffs' Exhibit No. 12, the original of which will be transmitted to the Circuit Court of Appeals.)

This system extends from a point 11 miles east of Durham, North Carolina, on the east to a point approximately 20 miles west of Westminster, South Carolina, on the west, a distance of approximately 260 miles east and west, and from Leaksville, North Carolina, on the north to the Lexington plant of the Lexington Water Power Company in South Carolina on the south, a distance of approximately 200 miles north and south. The electric generating facilities of the Duke Power System consist primarily of hydro-electric plants supplemented by storage reservoirs and steam station capacity. The total installed capacity of the system is 883,705 kilowatts, of which 596,705 KW, or 67.5% is hydro and 287,000 KW or 32.5% is steam. This generating capacity is amply sufficient to take care of the present power requirements of the Piedmont Section of the two states, and to provide for any increase in requirements that may be reasonably anticipated in the near future. The Duke Power System has at all times made every reasonable effort to extend the use of electrictiy and to increase its sales of current, and has co-operated in every way it reasonably could to induce industries to locate in its territory. The electric transmission network of the system is connected to each of the 50 sources of power sup-

(171) ply of the system in North and South Carolina, and transmits power from those sources to the consumers in the entire territory served. The major portion of the transmission lines is of double-circuit construction. Where single circuit lines exist, there are usually two sources of power, one at each end. This arrangement of transmission lines, in conjunction with the numerous sources of generation, insures reliable and dependable electric service over the entire territory. The transmission and distribution lines of the system vary in voltage from 115,000 volts for the primary transmission lines down to 110 volts for the secondary distribution lines. The mileage of these lines, referring to them as they were owned and operated prior to the merger, is as follows: Duke Power Company transmission and distribution lines, 2,693 miles; Southern Public Utilities Company transmission lines 327 miles; Southern Public Utilities Company urban distribution lines, 2,312 miles; Southern Public Utilities Company rural distribution lines, 2,639 miles. In South Carolina, Duke Power System owns and operates approximately 2,700 miles of transmission and distributions lines, including, of course, the lines in Greenwood, Newberry and Laurens Counties, which are connected with all generating facilities and sources of power of the system. In the Counties of Greenwood, Laurens, and Newberry, South Carolina, Duke Power System owns and operates 206.26 miles of transmission line (constituting 333.71 circuit miles), and 171.59 miles of urban suburban and rural distribution lines. (A statement showing the transmission and distribution lines of the Duke Power System in Greenwood, Laurens, and Newberry Counties was introduced in evidence as Plaintiffs' Exhibit No. 13, a copy of which is hereto attached.)

Greenwood, Laurens and Newberry Counties are served by means of a double circuit 100 KV tower line loop from Newberry to Greenwood, to Belton to Greenville to Spartanburg and back to Newberry. The sources of power connected with and available for feeding this loop are the (1) Great Falls group of plants, and the other Duke System plants which tie into the Great Falls switching station; (2) Lexington hydro plant and the Parr steam plant; (3) Tuxedo, Turner, Lake Lure and 99 Islands Plants; (4) Tiger Steam Plant at Duncan, (172) and (5) interchange with the Carolina Power and

Light Company at Greenville. In addition, at Spartanburg, Greenville, Belton, Laurens and Greenwood, there are connections to this loop with the Southern Public Utilities Company hydro plants. The transmission lines and connections above referred to at all times and under all conditions insure continuous and dependable power service in this territory. Greenwood can be served with the 100 KV double circuit line from Newberry, or from the double circuit 100 KV line from Greenville, or from both. Also there are connected at Greenwood the 44 KV line from Belton and the 22 KV line from Abbeville, which ties into the Portman Shoals and Gregg Shoals stations. Newberry is the location of one of the largest switching stations of the Duke Power System, and here are connected 4 double circuit 100 KV lines from Great Falls, Lexington, Spartanburg and Greenville, and two 44 KV lines connecting with the Van Patton Station and the Boyd's Mill and Tumbling Shoals Stations. Ninety-Six is on the double circuit 100 KV line between Newberry and Greenwood and can be served from either of these points. Laurens can receive power from the double circuit 44 KV line from Newberry, from the single circuit 44 KV line from Spartanburg and Van Patton Shoals, and from the 22 KV line from Boyd's Mill and Tumbling Shoals. Power sales of Duke Power Company show an almost unbroken record of annual increase up to and including 1929. The record during the past 25 years in five-year periods is as follows: Period from 1909 to 1913, the average annual KWH, 181,935,866. Now that is taken at 100% at that time. Now the period from 1914 to 1918, inclusive, 381,123,739 KWH, or 209.48% increase over the first five-year period that is taken as the 100% period. 1919 to 1923, inclusive, 659,003,530 KWH, or 362.22% over that same period of 1909 to 1913; and the period from 1924 to 1928, average annual KWH, 1,164,242,576, or 639.92%; the period from 1929 to 1933 inclusive, 1,432,201,636 KWH, and the percentage is 787.20. The maximum annual KWH sales amounted to 1,579,943,224 KWHs in 1929. This decreased approximately 16½% during 1932 but increased to 1,443,558,053 KWH, or within about 9% of the maximum sales during 1933. In 1934, this decreased to 1,314,898,297 KWH.

The Duke Power System has from time to time within recent years made reductions in its rates. (A

(173) statement showing the reductions in rates made by the Duke Power System since December 1, 1928, was introduced in evidence as Plaintiffs' Exhibit No. 14, a copy of which is hereto attached.) The first reduction is December 1, 1928, in the amount of $519,400.00. That is an annual reduction in gross revenue based on the years revenue prior to the reduction. If the same number of kilowatt hours had been sold in the previous year at the reduced rate, the gross revenue would have been reduced in that amount. The reduction on November 1, 1932, of $1,515,500.00 was a further reduction in addition to that of December 1, 1928. It does not include the prior reduction. On May 1, 1933, there was a further reduction of $418,100.00, on September 1, 1934, there was another reduction of $1,335,000.00 and on March 1, 1935, a further reduction of $118,500.00 each of which was similar in every respect to the reduction as of December 1, 1938, and November 1, 1932. The total reductions of $3,906,500.00 are reductions for the entire Duke Power System which includes both the Duke Power Company and the Southern Public Utilities Company and includes operations both in North and South Carolina. In arriving at these figures, transactions between the Duke Power Company and its affiliate were eliminated.

The rates of the Duke Power System, including the Duke Power Company and the Southern Public Utilities Company, are subject to the regulation and control of the South Carolina Railroad Commission. This Commission has approved the rates at which both companies are now selling power in South Carolina. Prior to the reduction of September 1, 1934, the South Carolina Railroad Commission had made an investigation of the property and affairs of these two companies. This reduction was in consequence of an order of the South Carolina Railroad Commission and the new rates were approved by that Commission. This investigation had been going on for a couple of years or more prior to September 1, 1934.

Q. Were any negotiations conducted between the rate experts of the Commission and the rate men of the Duke Power System? A. Yes, sir, the rate expert of the Commission was in conference with our rate engineer.

Mr. D. W. Robinson: I suggest that is hearsay testimony.

(174) Taken subject to objection.

A. And as a result of that conference, these rates were reduced in this amount.

The reduction of March 1, 1934, followed that and was approved by the South Carolina Commission and the North Carolina Commission, as were all of these reductions. The Duke Power System maintains the same rates in both North Carolina and South Carolina. There have been no increases in rates since December 1, 1928, that being the time of the first reduction above referred to. I have with me a copy of the rates of the Duke Power Company and Southern Public Utilities Company which have been approved by the South Carolina Railroad Commission. (The plaintiffs introduced in evidence as their Exhibit 15, the rate schedules of the Duke Power Company on file with, and approved by, the South Carolina Railroad Commission, and as their Exhibit No. 16, the rate schedules of the Southern Public Utilities Company on file with, and approved by, the South Carolina Railroad Commission, portions of which are hereto attached.)

The financial structure of the Duke Power Company as of December 31, 1934, is as follows: $283,700.00 of preferred stock of the par value of $100.00 a share; $101,004,897.70 of common stock, each share having a par value of $100.00, and $40,000,000.00 of outstanding bonds. The financial structure of the Southern Public Utilities Company as of the same date was as follows: $21,000,000.00 of common stock, each share having a par value of $100.00; $16,487,000 of its own bonds; and $4,732,000.00 of underlying bonds issued by other companies whose properties the Southern Public Utilities Company has acquired. As the result of the merger the common stock of the Southern Public Utilities Company has been cancelled inasmuch as it was wholly owned by Duke Power Company, and Duke Power Company has assumed the bonds of Southern Public Utilities Company, including the underlying bonds referred to. In all other respects the financial structure of the Duke Power Company is the same today as it was December 31, 1934. Without going into details as to the actual investment of the Duke Power System, I think it sufficient to say

(175) that its actual investment in operating properties in the territory it serves is very considerably in excess of $100,000,000.00.

The defendants intend to construct on the Saluda River in this state, at a point known as Buzzard Roost, a hydro-electric plant, with transmission and distribution lines extending into the Counties of Greenwood, Newberry and Laurens, for the purpose of engaging in the business, in these counties, of furnishing electrical energy to municipalities, industrial enterprises, private individuals and to the public generally for domestic, commercial and industrial uses. The project would be constructed with federal funds advanced to the County of Greenwood by the Administrator of Public Works under the National Industrial Recovery Act. A copy of the contract, dated December 8, 1934, between the Federal Emergency Administrator of Public Works and Greenwood County under which these federal funds would be advanced and the project constructed, is attached to the answer of the defendant, Harold L. Ickes, as Federal Emergency Administrator of Public Works, and marked as Exhibit "A". A copy of the original resolution of the Finance Board providing for the construction of the project and the issuance of bonds to defray in part the cost of its construction is attached to the orignal bill of complaint of the plaintiffs, and is marked as Exhibit "I". This resolution was subsequently amended by The Finance Board and a copy of the resolution as amended is attached to and made a part of the answer of the defendants, Greenwood County and its Finance Board. Exhibit "II", is attached to and made a part of the original bill of complaint of the plaintiffs, is an extract from the application of Greenwood County to the Federal Power Commission, filed September 13, 1934, for a license for the Buzzard Roost project. This extract shows, among other things, the customers with whom the County has entered into contracts and with whom it proposes to enter into contracts for the sale of electric energy which would produced by the Buzzard Roost plant if it should be contracted. Practically all of the customers with whom the County has entered into contracts, and with whom it proposes to enter into contracts, for the sale of power which would be produced by the Buzzard Roost project are now and for a number of years have been customers of the plaintiffs. I have a list of the plain-

(176) tiffs' customers in Greenwood, Newberry and Laurens Counties.

(The plaintiffs introduced in evidence as their Exhibit No. 17, a statement entitled "Duke Power Company (including Southern Public Utilities Company) power sold and delivered in Greenwood, Laurens and Newberry Counties, South Carolina (Excluding intercompany sales) for the calendar year 1934", a copy of which is hereto attached.)

As shown by this statement the Duke Power System has a grand total of 1,190 customers in the three counties of Greenwood, Newberry and Laurens. In the calendar year 1934, the Duke System sold to those customers 62,142,838 KWH. These 1,190 customers of the plaintiffs include only customers receiving service directly from the plaintiffs and do not include customers who received service indirectly. The Duke Power System sells power wholesale to the towns of Greenwood, Ninety-Six, Clinton, Laurens, Newberry, and Prosperity which retail this power, and, consequently, the plaintiffs have no record of the ultimate customers served. In certain cases only the gross number of customers in the counties appear on this statement. This gross figure is given because there are a lot of miscellaneous customers or individuals consisting of residential consumers, churches, stores, etc., which would make too long a list if each were named. The dates listed in the column "Date of Beginning of Service" are the dates at which the plaintiffs began serving the customers opposite whose names those dates appear. For instance, the Mathews Cotton Mill, at Greenwood, has been served since October 18, 1913, and the Newberry Cotton Mills, in Newberry, since August 1, 1911. These customers have been served by us over a long period of time.

I have a statement on which I have shown the customers now served by the plaintiffs in these three counties with whom, according to the County's application to the Federal Power Commission, it has entered into contracts, or proposes to enter into contracts, for the sale of power that would be produced by the Buzzard Roost plant. (The plaintiffs offered in evidence, as their Exhibit No. 18, the above statement, a copy of which is hereto attached.) On this statement there first appears

(177) a list of the customers with whom the County already has made contracts, according to the application which it has filed with the Federal Power Commission. The figures in the column "Sales by Duke Power System for year 1934" show opposite the name of each customer the amount of power sold to that customer during the year 1934 by the Duke System. The last column "Greenwood County's estimate of Annual Power Consumption" shows the amount of power the County expects to sell to each of these customers who are now customers of the Duke System but with whom the County, according to its application, has made contract for the sale of power. During the year 1934 the Duke System sold 12,107,735 kilowatt hours of electricity to these customers with whom the County holds contracts. The second list on this statement shows the customers listed in the County's application to the Federal Power Commission as prospective customers to whom the County might sell power. The figures in the first column show the kilowatt hours sold to these customers by the Duke System during the year 1934 and the last column shows the County's estimate of the annual power consumption by each of these customers as given by the County in its application to the Federal Power Commission. The County has listed in its application either as customers with whom the County has contracts or as prospective customers all but three of the present customers of the Duke Power System in these three counties. This statement shows where we have contracts and where Greenwood County proposes to serve, where they have got actual contracts and where they have got prospective contracts.

The Duke Power Company and the Southern Public Utilities Company are now, and have been for some years past, large property owners and taxpayers to the State of South Carolina, to Greenwood County, and to the Federal Government. I have a statement showing the amount of taxes paid by the plaintiffs on account of their business and property in South Carolina for the calendar year 1934. (The plaintiffs introduced in evidence as their Exhibit No. 19, this statement entitled "Duke Power Company—South Carolina Taxes Paid for the Calendar Year 1934", a copy of which is hereto attached.) In the calendar year 1934 the plaintiffs paid directly to the State of South Carolina, in taxes, $1,478,305.93. In addi-

(178) tion to this, in the year 1934 the plaintiffs paid, on account of operations in South Carolina, Federal excise taxes in the amount of $42,468.02, and other taxes in the amount of $180,093.93, making the total amount of taxes paid on account of business in South Carolina in 1934, $1,700,869.88. The gross receipts of the Duke Power System for the year 1934, eliminating inter-company transactions and sales, was $7,097,510.26, making the ratio of taxes to gross receipts of the System for the year 1934, 23.96%. In other words, out of every dollar of the revenue that we took in practically 24c was paid in taxes.

I have a statement showing the amount of taxes that the plaintiffs paid to Greenwood County for several years past. (The plaintiffs introduced in evidence, as their Exhibit No. 20, this statement entitled "Duke Power Company System Taxes—Greenwood County", a copy of which is hereto attached.) This statement shows taxes which each of the plaintiffs paid to Greenwood County for the years 1929 to 1934 inclusive.

All of the power sold by plaintiffs in the State of South Carolina is sold locally. While part of the power sold in this state is at times generated in North Carolina, yet this power is brought into the state at high voltages and carried to the local substations of the plaintiffs where it is reduced to low voltages, and then distributed to the local customers of plaintiffs in the state. As I have already stated, the rates of plaintiffs for the sale of power in South Carolina are fixed by the Railroad Commission of this state, which by the statutes of South Carolina is given jurisdiction over the rates of privately owned and operated electrical utilities, and plaintiffs' sales of electric power in this state are made at the rates approved by the State Railroad Commission. As I further stated, plaintiffs also do business as electrical utilities in the State of North Carolina, its rates in that state being fixed by the North Carolina Public Utilities Commission. The rates in the two states are the same. Approximately two-thirds of the gross revenue of plaintiffs is derived from their business in North Carolina, and approximately one-third from their business in South Carolina. All the reductions referred to in Exhibit No. 14, other than the reduction of September 1, 1934, were voluntary reductions.

The rates at which the defendants would sell the

(179) electric power which would be produced by the Buzzard Roost project are shown in the extract from the application of Greenwood County to the Federal Power Commission attached to the original bill of complaint, marked Exhibit "II",—and also in the resolution of the Finance Board of Greenwood County, which is attached to and made a part of the answer of Greenwood County and its Finance Board. These proposed rates of the defendants are substantially below the rates of plaintiffs, and I think it is obvious that it is on account of these lower rates that the defendants have been able to make contracts for the sale of the power which would be produced by the Buzzard Roost project with the customers of the plaintiffs. I would not undertake to testify of my own knowledge whether the Buzzard Roost project would be self-supporting at the rates at which defendants propose to sell the power which would be produced by this project, as this is a question for the engineers who have investigated the cost of the project, its power output, and probable revenues and expenses. However, I can say and do say that the defendants could not undersell the plaintiffs and deprive plaintiffs of their business were it not for the fact that the defendants expect to construct the Buzzard Roost project with federal funds, approximately 30% of the cost of the construction, or 30% of the cost of the labor and material employed upon the project, being a gift or grant of federal funds which the defendants will not have to repay, and were it not for the further fact that the Buzzard Roost project will be very largely exempt from the payment of taxes, while as I have already stated, more than 20 cents out of every dollar of gross revenue earned by the plaintiffs in the State of South Carolina goes for the payment of taxes. I do not believe the defendants could construct the Buzzard Roost project and successfully operate it in competition with plaintiffs were it not that the project will be constructed with federal funds which the Administrator of Public Works proposes to advance to the County for the construction of the project. As a matter of fact it is this advancement of federal funds for the construction of the project which will deprive the plaintiffs of their business in the Counties in which the project of the defendants would operate and sell power. I have had experience in financing power projects and selling bonds, and have familiarized myself with such finance

(180) operations. Of course, my position has been such that it has been necessary for me to become familiar and keep up with those affairs and I have had to negotiate or assist in the negotiation for the sale of bonds on our own properties from time to time.

Q. Mr. Marshall, if Greenwood County did not have the benefit of this federal financing to which you have referred, and which it expects to obtain through the Federal Emergency Administrator of Public Works, under which it will sell its bonds to the Adminstrator or the United States, at four per cent. interest, the bonds being revenue bonds and not carrying the general credit of the County, what do you say as to whether the County would be able to finance that project?

Mr. D. W. Robinson: I must interpose my objection to the witness giving an opinion on this question.

A. I don't believe it would be possible to sell them.

Q. Suppose the County had to sell these bonds in the market to private investors. Do you think it would be able to sell them? A. No private investor in my opinion would buy a revenue bond. In this kind of a case they are putting up 100 cents of every dollar into the bonds and that would be taking the private investor's money at a lower interest, and the other fellow would be making the money, if it was made. I don't understand how any private investor could take such a proposition. It is not a mortgage on the property.

Q. The bond holders, in other words, would put up all the money that went into the project? A. That is my understanding of it.

Q. And to get their money back and to get their interest, they would have to depend upon the earnings of the project? A. Absolutely.

Q. And you don't think that bonds of that type, under the circumstances as they appear here, could be sold to private investors? A. That is my opinion.

CROSS EXAMINATION.

This prepared statement that I have given in evidence was prepared under my direction, and in the preparation I asked for the figures and checked them. Mr. E. R. Bucher, Treasurer of the Duke Power Company presented some figures, Mr. Reed, the rate man,

(181) some of the figures, and some engineering data I got from our engineering department—Mr. Nabow and a good many other engineers there. But I have been intimately connected and associated with these companies all the time and I have a fairly good idea of the thing.

In carrying out the Duke System's opposition to the Buzzard Roost project, we first tried to get information as to what was going on—what they proposed, and we tried to get that in the Department of the Public Works in Washington that this matter came under, and we had various steps there, including a hearing. We were represented there by Mr. Robinson and also by Ex-Governor Gardner. Our company protested directly to the President, Mr. Roosevelt. We thought we would protest to the Federal Power Commission but we changed our mind and did not. The P. W. A. gave us a hearing and after the hearing they went ahead and authorized this loan and grant. We are opopsing the Santee-Cooper project in every way we can.

There appears in the capital structure of the company $23,000,000.00 not paid by outside stock. I take exception to the write-up business. There is a difference between that and the value of the property. This is the amount which was set up on the books, or an increase that was made, on the valution of the properties that was made by J. E. Sirrine and Company and the W. S. Lee Engineering Company. A valuation was made at that time and the present day values as of that time were set up. Now, I would like to say in connection with that that the estimate of J. E. Sirrine and Company was the highest one and the W. S. Lee Engineering Company was the lower, and the value was set up on an average between the two. I have no connection at all with the P. & N. Railway. The Duke Power Company owns some stock in the P. & N.

We objected in Washington to Buzzard Roost selling the Greenwood Cotton Mills who are not our customers and never have been. We lost some customers at Clinton. We lost the City of Clinton, the Clinton Cotton Mills, the Lydia Cotton Mills and the Panola Cotton Mills. I think we have the information here about the Grendel Cotton Mills. None of these customers were lost to any power development financed by the Federal government. It would be pretty hard to tell what was the reason in the mind of the customer who declined to renew

(182) a contract. I do not know whether they are buying their power cheaper or producing it cheaper than what they had to pay us. I do know a lot of people think they can. I rather think it is true that most of the textiles in Greenwood County produce their own power but most of the textile mills in the Piedmont Section take power from the Duke System. I think it is probably true that the only plant in Greenwood County which purchases power from the Duke System is the Mathews Mill.

I think it is true that the Duke Power Company furnishes only a small part of the power consumed in Greenwood County. The present installed capacity of the Duke System is ample to take care of the present needs of the Piedmont Section of the Carolinas and should the needs become any greater, we will, as we have done in the past, increase our facilities. It has been a matter of steady growth with us ever since we went into the business. We pioneered in it. We are prepared to furnish additional hydro-electric and steam plants if necessary. I do not think that it is an exactly fair representation of our position to say that we do not wish anyone else to furnish power in this territory. I believe the duplication of investment tends to increase the cost to the ultimate consumer, and I don't believe we will ever get it down unless the investment is held to a minimum. We think, as far as the development of power in the Piedmont Carolinas by anyone else is concerned, that we have power to sell now in excess of our sales and we certainly do not want anybody else to sell a[illegible] of that power. I think it correct that we have h[illegible]n four and five million dollars in undeveloped wa[illegible] resources in this area. This undeveloped property is located on the Catawba River, the Johns River, the Savannah River, the Broad River and its tributaries.

There had been some increases in rates before 1920, I believe, and there had been some decreases. Up to December, 1928, the general tendency had not been up. There has never been but one increase that I remember. That was about 1920 or 1921 and was a rate case we had in North Carolina. We secured the right there to raise our rates.

I am pretty sure that we have brought a new industry into Greenwood County. I remember some silk mill, but I may be wrong about which county. It was in one of these three counties. I don't remember the name

(183) of the mill. The reason I remember about it is that we carried on an active campaign, advertised in the magazines, and advertised the advantages of the Piedmont Section of South Carolina. We have thousands of replies and some people located who didn't come to see us about a location but told us it was a result of that. I cannot name from recollection any industry that we have brought into any one of these three counties. We have sent out thousands of these circulars advertising that and every other county. We sent out thousands, and spend hundreds of thousands of dollars, advertising the Carolinas and their industries.

I do not think the tendency in recent years has been for textile mills to build their own steam plants and not purchase power from us. There have been some who have built steam plants that used a lot of processing steam. I suppose the Grendel Mills did build its own steam plant. If they were all going to do that we wouldn't have any customers. I don't think the percentage of those that have done so has been large.

My company has no investment or affiliate in the Dominion of Canada. I think you have in mind the Duke-Price Company, but there is nobody connected with the Duke System interested in it so far as I know. I don't think any of our companies own stock in the Duke-Price Company. I might say, in answer to that, that the Duke Power Company has no interest in any other system, and no other company has any interest in the Duke Power Company, to answer that fully, any other electric company. We have two contracts with the Carolina Light and Power Company—one to sell them power at Wateree and the other for an exchange of power at Greenville and Wateree. In the contract for the sale of power, the Carolina Light and Power Company agrees, under certain conditions, to pay us so much a day for power. In other words, they have got to pay us a fixed sum per day for power, and there is a certain amount of kilowatt hours that they can take during that day, but they have to pay us at the rate of so much per day whether they take any power or not; and if you reduce it to the price of kilowatts, it is three and one-half mills to June 1, 1939, and then four mills thereafter. The contract, however, is based on so much per day and not so much an hour. It is only related to kilowatts for keeping the amount of kilowatts.

(184) I stated that it was my opinion that the Buzzard Roost project could not undersell the Duke System if it were not for two factors: first, a total or partial exemption from taxation, and, second, a grant from the P. W. A. I understand that it is stated that the grant just about compensates the borrower for the increased wage scale required by the P. W. A. But if a contractor enters into a contract to build he has to pay a higher rate of wages, practically the same rates, I think. I have not looked at that to make sure. It is my opinion that the grant results in a saving to the builder. I have seen the P. W. A. wage scales but I don't know what they are.

I do not know that in the days of 1928 and 1929 a good deal more than the total cost of the project in some sections of the country was raised on bonds. I know we never did it. I am speaking of my information in regard to the financing we have done. More than 100% of the operating funds of other companies may have been raised on bonds, but without going into it, I cannot express an opinion as to whether or not it was done. I don't know much about that wildcat financing because I have never been connected with it. I am not an expert on that and never had any connection with it either.

South Carolina had a survey a few years ago. As far as the values set out in that investigation are concerned, their engineers never made any inventory of our properties. The report prepared as a result of that survey is known as "Report on the Electric Utility Situation in South Carolina, filed December 1, 1931". On page 396, this report reads: "The fair value of the property of the Duke Power Company, December 1, 1931, before the deduction for accrued depreciation, is indicated to be $50,075,588, and after the deduction for accrued depreciation to be $44,363,429. The Company's claimed valuations are $77,472,481 before depreciation, and $75,461,221 after depreciation."

The last two of the five rate reductions since 1928 about which I have spoken were made after the application for the Buzzard Roost project was filed.

RE-DIRECT EXAMINATION.

The plaintiffs have no re-direct examination for Mr. Marshall. Plaintiffs would like to refer to and introduce

(185) in evidence the following from the Report of the South Carolina Power Rate Investigating Committee, to which report the defendants have referred: First, the provisions of the Act of the General Assembly of South Carolina, creating the South Carolina Power Rate Investigating Committee, as set forth in section 87 of the General Appropriations Act of 1931, as follows: "Said committee shall accord to all persons and corporations interested in or affected by the terms of this Section an opportunity to be heard." Also, the following from page 11 of the report: "After the organization of its technical staff, there was left to the Committee less than five months to accomplish all of the investigations delegated to it and to file its report as was required under the Act. Because of this element of time, the Committee manifestly could not go through the usual processes involved in fixing valuations for rate making. It was compelled, therefore, to use short-cut methods in arriving at results upon which rate adjustments could be based."

(The plaintiffs offered in evidence as their Exhibit No. 21 a franchise from the City of Newberry to the Southern Power Company, the material parts of which are hereto attached. The plaintiffs offered in evidence as their Exhibit No. 22 a franchise from the City of Laurens to the Reedy River Power Company, a copy of which is hereto attached. The plaintiffs offered in evidence as their Exhibit No. 23, a franchise from the City of Laurens to the Sullivan Power Company, a copy of which is hereto attached. It is admitted that these franchises, plaintiffs' Exhibits Nos. 21, 22, and 23, have been duly assigned to and are now owned by the Duke Power Company.)

J. E. SIRRINE, a witness for the plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

I am a designing and consulting engineer, and live in Greenville, South Carolina, where I have resided since 1876. I am sixty-two years old. I am Senior Partner and Executive Head of the firm of J. E. Sirrine & Com-

(186) pany, Designing and Consulting Engineers. This business was started in 1902 under the name of J. E. Sirrine and in 1921 was changed to a partnership under the name of J. E. Sirrine & Company. Its principal office has been in Greenville, South Carolina, since 1902. My engineering experience has been as follows: I was graduated from Furman University in 1890 with the degree of B. S. I worked for a year on various surveys as rodman and transitman and in 1891 was employed as assistant engineer on the construction of a sewer system at Orange and Summit, New Jersey. In 1892 I was employed for about a year as Assistant City Engineer of Greenville on the construction of a sewer system. From that time until 1895 I did general engineering and survey work in private practice. In 1895 I was employed by Lockwood, Greene & Company, of Boston, as resident engineer on the construction of a cotton mill in Greenville and remained with them until the Spring of 1902. The last several years of that time I was in charge of their Southern Office and had charge of the construction of a number of industrial plants scattered over the South.

In 1902 I started practicing under my own name, specializing in the design of hydro-electric and steam plants, industrial plants, including cotton mills, warehouses, finishing plants, tobacco factories and other industrial work.

During the period from 1902 to date, the firm of J. E. Sirrine & Company has acted as consulting and designing engineers for many concerns. We have designed a number of hydro-electric and steam plants, many of them located in South Carolina, and have also designed and built many miles of transmission lines. In addition to this we have acted as consulting engineers for some of the large power companies in the design and construction of both hydro-electric and steam plants. We have acted as consulting and designing engineers for a very large percentage of the South's equipment in cotton manufacturing and dyeing, bleaching, printing and finishing, and in approximately one-half of its tobacco output.

Among the hydro-electric and steam power plants which we have designed are the following:

(187) Rebuilding Portman Shoals, including Dam and burned Powerhouse;
Dam and Power Plant for Appalache Mills, Arlington, S. C.;
Dam and Powerhouse, Belton Power Company, Belton S. C.;
Dam and Powerhouse, and Steam Plant for Albany Power & Mfg. Co., Albany, Ga.;
Dam and Powerhouse, Gaston Shoals Plant, near Gaffney, S. C.;
Lonsdale Mill—Hydroelectric Plant—Conneross Creek, near Seneca, S. C.;
Dam and Powerhouse on Savannah River at Gregg Shoals, for Savannah River Power Co.;
Two Dams and Powerhouse for Reedy River Power Company, at Boyd's Mill and Tumbling Shoals;
Cliffside Mills—Hydroelectric Power Plant.

In addition to these we have made numerous improvements and additions to water wheel equipments at various industrial plants in several States of the South, and have designed and installed probably a hundred steam plants for various clients, including some utilities.

In collaboration with Mr. W. S. Lee, we acted as consulting engineers for the repair of the Greenville Water Works earth dam after the damage caused by the failure of the drain line under this dam.

Some of the transmission lines which we have designed and built were as follows:

Gaston Shoals to Spartanburg	30 Miles
Berry Shoals to Tucapau	6 Miles
Conneross Creek to Seneca	7 Miles
Ware Shoals—Hydro Plant to Mill	2 Miles
Albany Power Company	3 Miles
Belton Power Company	17 Miles
Reedy River Power Company	13 Miles
Savannah River Power Comapny	25 Miles
Easley to Pickens	11 Miles
Appalache to Victor	2 Miles
Republic Cotton Mills to Great Falls	5 Miles
Distribution Lines in Towns and Industrial Villages, approximately	300 Miles

(188) I am a member of the American Society of Civil Engineers, American Society of Mechanical Engineers, and the American Institute of Electrical Engineers.

About a year ago we were employed by the plaintiffs to look into the proposed Buzzard Roost hydro developments in Greenwood County. We collaborated first with Johnson & Roberts on report, and then they asked us to make an independent investigation of the project, which we have done. I would like to say here that the detail work has been done by several members of our organization, principally on the electrical work by Mr. George Wrigley, who is head of our electrical department, and is an engineer of wide experience in this field, and all estimates in connection with hydraulic structures, railroads, roads, and so forth, have been made by Mr. W. G. Perry, Jr., who is a civl engineer of wide experience in work of this character. I have been in frequent conference with them, examined their figures as they were being made, and satisfied myself of the soundness of the method they were using, and am also satisfied that the results are correct.

PROJECT AS PROPOSED BY GREENWOOD COUNTY ENGINEERS

Under my direction the Sirrine organization has made a very careful study of all features of the proposed development, and we find that the project as outlined in the application is defective in that:

Mr. D. W. Robinson: At this point, Mr. Master, I want to interpose my objection to any testimony with regard to the cost of the project, with regard to the safety of the dam, with regard to the available power, with regard to the operations costs, upon two grounds: First, that these matters are not subject to review in this proceeding, and, second, upon the ground that the Duke Power Company, having urged these questions unsuccessfuly before the Public Works Administration, is estopped to raise the question again. Mr. Haynsworth, I will ask that that objection go throughout the testimony.

Mr. Haynsworth: That's perfectly satisfactory.

(189) Witness continued:

(a) The cost of the proposed development will be greatly in excess of the funds provided by the P. W. A. loan and grant.

(b) If constructed according to plans furnished prospective bidders, the project will be a menace to life and property below the dam.

(c) According to the application to the Federal Power Commission, dated September 8th, 1934, "The project will sell approximately 30 million K.W. Hrs. yearly of primary power, and 20 million K.W. Hrs. yearly of secondary power". Our calculations show that this power production is overestimated, and that the Buzzard Roost Hydro Plant will produce only approximately 28,000,000 K.W. Hrs. yearly of primary power, and 14,000,000 K.W. Hrs. of secondary and dump power. It should be noted that this is the estimated possible production of the plant, and is not the amount of power that can be sold under actual operating conditions.

The defects in estimate and design are as follows:

1. Insufficient land is provided for the reservoir, and the cost of land is underestimated.

2. Cost of clearing reservoir is underestimated.

3. Cost of Highway, Railroad and Wire changes is underestimated.

4. The "Fuse Plug" emergency spillway is a hazardous plan for disposing of floods.

5. The earth dam, as designed, will require large maintenance expense after completion.

6. The riprap shown is insufficient in both extent and thickness.

7. The rock fill toe is inadequate.

(190) 8. No provision is made to protect the downstream slop of the dam from erosion.

9. The flood gates provided are insufficient.

10. The approach channel to the power house and spillway is too small, and will result in excessive velocities during floods.

11. The foundation for the spillway is doubtful, and increased excavation and concrete costs may be encountered after construction is begun. The County Estimate of Class "A" concrete in the spillway is in error.

12. The proposed method of excavating the tailrace is not practicable and will result in production loss to the plant and maintenance cost for years to come, and damage to property below.

13. Both earth and rock excavation quantities are underestimated by the County Engineers.

14. The main transmission line is underestimated in price.

15. Rural lines are underestimated in price.

16. Transmission easements and rights of way are underestimated.

17. No provision has been made in contracts or estimate for operatives village, store house, shop, materials and supplies, etc. The above items are discussed in more detail below. Where reference is made to the "County Estimate", such reference is to the estimate included in the application to the Federal Power Commission, under date of September 8, 1934. Taking up these matters more in detail:

1. Land for Reservoir—The County Engineers propose to purchase only the actual flooded area, plus a fifty foot strip around the reservoir, plus a small area for the power plant site. This is inadequate. In our opinion it would be impossible to purchase all of the

(191). land on this basis, and if the land could be so purchased the project would be liable to numerous and expensive law suits in the future.

The County Engineers estimate 12,566 acres at $17.50 per acre or a total cost of $219,905. We consider that the minimum amount of land necessary will be 18,000 acres, or about one and one-half acres for each acre of reservoir as compared with two acres, which has been the experience of most power companies in this territory. In our opinion the cost of $17.50 per acre estimated by the County Engineers is also too low. While a portion of the land may have been optioned at this price, there are always certain tracts of land which cannot be purchased without strong opposition and even legal action. Prices for such land are usually high and tend to run up the average cost of land acquired for the development. We are including in our estimate $22.50 per acre, which includes the cost of acquisition, recording, abstracting, etc. This will amount to $405,000, which is $185,095 more than estimated by the County Engineers.

2. Clearing Reservoir—The County Engineers estimate $30 per acre for an estimated wooded area of 5.959 acres, or a total cost of $178,770. They propose to clear only above elevation 410. Since the river banks in the lower half of the reservoir range in elevation from 390 to 400 this would leave all timber along the river standing in water. This is contrary to State Board of Health requirements. Also this standing timber, much of which is large, would immediately die and would eventually be a serious hazard to the railroad and highway crossings. All floods must be handled through gates only 38′ in width. If this large timber is left standing in the reservoir it must eventually float out and it could easily obstruct these flood gates and might possibly result in the destruction of the entire earth dam. The clearing cost of $30 per acre of wooded area is also insufficient. The Buzzard Roost reservoir must be cleared, under P.W.A. requirements, with forty cent labor.

Approximately 8,000 of the 12,000 acres of reservoir at Buzzard Roost is wooded and we have estimated this

(192) 8,000 acres at $50 per acre, or $400,000. This is $221,230 more than the County estimated. We consider this a minimum figure.

3. Highways, Railroad and Wire Changes—Both railroads cross Saluda River on steel main spans, with wood trestle approaches. The S.A.L. railroad crosses Cane Creek on a wood trestle. All of these structures will be wholly or partially submerged by the construction of the proposed dam. In estimating the cost of the S.A.L. crossings we have figured on raising the Saluda River Bridge in place and on substituting concrete piers and steel girder spans for the present wood trestle. We have also considered flattening the slopes of all fills to a 2½ to 1 slope and of riprapping these fills as a protection against wave action. For the S.A.L. Cane Creek crossing we have considered relocating a section of the railroad in order to shorten the crossing. This is a much cheaper solution than raising the track on the present location and rebuilding the present trestle. The new trestle at Cane Creek would be of concrete piers and steel girders. The C. & W. C. Saluda River crossing we treated in the same manner as described for the S. A. L. crossing. The estimates for all of these crossings contemplate the most economical construction that should be permitted for safe operation under the changed conditions brought about by the raise in water elevation. The Cothran Bridge on State Highway No. 7 consists of a steel main span with concrete bent and concrete deck approaches.

We have estimated raising the bridge and approaches six feet. In determining the cost of the Reedy River crossing we have assumed that since the new crossing would be an improvement on the present structure the State Highway Department would probably be willing to assume one-half of the cost of the improvement, and therefore only one-half is charged in our estimate. The proposed reservoir is crossed by the 100 KV steel tower line of the Duke Power Company from Newberry to Greenwood. The reservoir as planned will partially submerge seventeen towers on this line. It will be necessary to relocate approximately three miles of this line in order to obtain a span of practicable length. The South-

(193) ern Bell Telephone line change also requires a relocation and the estimate for this has been furnished us by Engineers of the Bell Telephone Company. Following is our estimate of the various changes described above:

Mr. D. W. Robinson: We object, Mr. Master, to the introduction of the estimate of the Southern Bell Telephone Company, on the ground that it is hearsay testimony.

S. A. L. Railroad at Saluda River	$220,000
S. A. L. Railroad at Cane Creek	$100,000
C. & W. C. Railroad Saluda River	$193,000
State Highway #7 at Saluda River	$47,000
½ cost of Highway #10 at Reedy River	$13,500
Duke Power Co. 100 KV Transmission Line	$44,500
Southern Bell Tel. Lines	$6,000
TOTAL	$624,000

The total of $624,000 represents an increase of $468,598 over the County estimate of $155,402.

4. Fuse Plug—In addition to the four flood gates, which are inadequate for the maximum flood which might be expected, the County Engineers propose to build a so-called "fuse plug". It is presumed that in case of an excessive flood, this dyke would be overtopped, and washed out, and the 200 foot channel would act as a spillway. The construction of this "fuse plug" channel is a dangerous solution of the flood control problem. Once water had started through this channel with ample fall below, and with a 12,000 acre reservoir above the extent of the material it would remove would be serious. Even if the rock elevations shown on the plan are solid ledge the reservoir could be drawn down to elevation 415 and this vast quantity of water would be discharged into the Lexington Reservoir at a time when the flood discharge facilities of the Lexington Plant would already have been taxed to the limit. As an example of what might be expected to follow in the giving away of this "fuse plug", I cite an instance that came under my observation during

(194) the flood of 1908 at a small plant on Reedy River, at a site known as Boyd's Mill. This plant was under construction and a low place on the side of the hills above the power plant, which was several feet in elevation above the spillway, had not been filled in. During the flood water got over the "saddle" and while it was a small pond and this hillside was apparently firm ground, it resulted in a break several hundred feet wide and about thirty feet deep, carrying the erosion down to the level of the river bed. It is reasonably certain that if and when this "fuse plug" went out it would result in a long shut-down and the replacement of the eroded material would cost more than the additional gates which we suggest.

Even a small discharge through this fuse plug channel would wash out a three or four hundred foot section of the Greenwood-Newberry highway.

5. Earth Dam—The earth dam proposed is to be of rolled fill in the middle third, with upper and lower slopes loosely dumped. If built as planned, this fill will be subject to settement in the outer sections for a number of years, and if the original cross section (which is not too heavy) is to be maintained, additional earth will have to be placed on both upstream and downstream slopes. This would of course cover up the riprap and sodding, and would be more expensive than placing this material during construction. Our estimate contemplates placing sufficient material to allow for settlement, and the result is 558,540 cubic yards as compared with the County estimate of 531,513 yards.

6. Riprap—The County plans show a twelve inch thickness of riprap extending from elevation 445 to elevation 425. This is insufficient in both thickness and extent. We are estimating riprap of two foot thickness extending from elevation 450 to elevation 418. This results in 12,650 cubic yards as compared with 4,136 cubic yards estimated by the County Engineers on the revised plans as submitted to prospective bidders.

7. Rock Fill Toe—We consider it necessary to place this toe on the surface of the ground as it stands, and to build the toe above normal flood level.

(195) 8. Planting of Sodding Down-Stream Slope of Dam—Our estimate for this is 20,448 square yards at twelve cents, or $2,454.

9. Flood Gates—The plans provide for four Taintor Gates, 38′ wide by 25′ high, to care for floods. As discussed above under the "fuse plug", these four gates would not handle the extreme flood that might be expected. We consider this "fuse plug", a hazardous method of construction and are considering that six gates of this size will be necessary for safety. This of course will increase by about 50% the cost of flood gates, and will also increase the cost of excavation and concrete for the spillway. Our estimates as shown are based on a six gate installation.

10. Powerhouse and Spillway Approach Channel—The approach channel as planned is inadequate in cross section, and the side slopes are too steep for stability. During a flood of the 1908 intensity the velocity in this channel would be about nine feet per second, while it is recognized that velocities in earth channels should not exceed four to six feet, depending on the nature of the material.

We consider the minimum requirements to be a channel capable of handling the 1908 flood with a velocity of six feet per second. This results in a waste of about 65,000 yards of material. If the channel is built as planned by the County, there would be danger of erosion on the steep banks, and serious slides might occur.

11. Spillway and Foundation—Records of drillings in the spillway area indicate that there is serious doubt if sufficiently solid rock will be found at depths planned by County Engineers. Our estimate of quantities of both excavation and concrete are based on carrying excavation here only to the approximate depth shown by the County drawings. If and when this project is constructed we think it very probable that it will be found necessary to carry foundations to a much greater depth than is estimated. Due to lack of more complete information on this foundation we are unable to make an estimate of such quantities.

(196) The County estimate as furnished bidders in Contract #4 calls for only fifty cubic yards of Class "A" concrete in the spillway section.

12. Tailrace Excavation—Plans show that the County Engineers plan to excavate a channel only 25' wide and 8' deep from the power house site to the river, a distance of about 1300'. Presumably they will depend on the water diverted during construction, or upon water discharged by the wheels after the completion of the plant to wash out the remainder of the tail race. In our opinion this method will not secure the desired results. It will be necessary to excavate the entire channel. This material, together with excess material from the approach channel must be wasted. The total yardage to waste is 238,500 yards, which we estimate at twenty cents per yard, or $47,700.

13. Earth and Rock Excavation—The County Engineers estimate as submitted for bids on the general contract shows 10,000 yards of earth excavation and 30,000 yards of rock excavation for the spillway, power house, switching yard and tailrace. These quantities are in error for the four gate installation. As planned, and with foundation carried only to the depth shown on the plans, we estimate approximately 34,000 yards of earth, and 48,000 yards of rock, or an increase of 24,000 yards in the earth and 18,000 yards in the rock.

For the six gate installation, which we consider necessary, we estimate a total of approximately 53,000 yards of earth and 66,000 yard of rock.

14. Main Transmission Line—The license application contemplates single poles set at 600 foot spacings To properly withstand glaze and wind conditions these poles would need to have a circumference of 56" at the ground. Estimated cost, including clearing of right-of-way and switching bents—$281,562. The 44,000 volt transmission system is planned as a loop. Considering the moderate voltage of 44,000 and the 84.3 mile length of this loop, it is an inadequate design. If the fault should occur between the power plant and Greenwood

(197) during the heavy operating hours, with all primary and secondary load in operation, the drop around the line by way of Newberry and Laurens to Greenwood would exceed 29%, which would mean unstable and unsatisfactory operation.

The estimated cost of step-down transformers stations contemplates the use of oil circuit breakers for all of the larger stations and voltage regulators for stations at Newberry, Laurens and Greenwood, and for the rural system. All this is in accordance with the diagram submitted in the application to the Federal Power Commission. The total estimated cost of all step-down substations is $187,237.

15. Rural Lines—The County estimate for the 100 miles of rural lines is $100,000. We estimate this rural line cost for 100 miles at $199,800, which includes the high voltage line, transformers, secondaries, house service, leads and meters. This is based on a 3 phase, 11,000 volt system as stated in the application.

16. Transmission Easements and Rights-of-Way—Even if the rural line right-of-way, is donated, the legal and agent's costs in connection with the right-of-way could hardly be less than $30 per mile, or $3,000. A cross country right-of-way must be acquired for the 44 KV line which connects the power plant with Greenwood, Ninety Six, Newberry, Clinton, and Laurens. We are making for this right-of-way a minimum allowance of $500 per mile, this to cover all costs in connection with acquiring and recording the right-of-way deeds. On this basis we obtain a total cost for rights-of-way on the 84.3 miles of 44 KV line and the 100 miles of rural line of $45,150.

17. Operators Village—The estimate shown in the application to the Federal Power Commission had no item covering the cost of operators' houses, warehouse, shop, trucks, or other maintenance equipment. So far no provision has been made for these necessary items in contracts advertised by the County. For these we estimate a minimum cost of about $22,000.

(198) ESTIMATE OF COST: Our estimate of cost, based on the four gate installation with fuse plug amounts to $3,999,687.

For the six gate installation, which we consider necessary for safety, the estimate is $4,245,379. Prices used in this estimate are taken from the low bids already received by Greenwood County on such items as have so far been covered by such proposals. On items not so far covered we have estimated unit costs. Quantities shown in the estimate were determined by us after a careful examination of the plans prepared by the County Engineers. With the exception of engineering, the general overhead costs carried in our appraisal are practically the same in amount or in percentage as those shown by the County Engineers in their estimate as submitted to the Federal Power Commission. The engineering we have calculated at 6% of the total cost of the project, as fixed in the contract between Greenwood County and their engineer, Mr. D. T. Duncan. In our opinion this estimate is conservative, and the project if properly and safely built will cost at least the amount determined in this estimate.

POWER PRODUCTION AND SALE

With a view to determining as accurately as possible the amount of primary and secondary power which the Buzzard Roost plant as proposed might be expected to produce, we have made a thorough study of all available stream flow records for a period of 38 years.

Our studies indicate that the plant will produce approximately 28,000,000 KWH of primary power and 14,000,000 KWH of secondary and dump power. Since this project is to have no other source of power they should not contract for delivery of power in excess of the above amount.

While the theoretical probable production of the plant is as stated above, it will be impossible to sell power in this amount. Business conditions will not at all times permit customers to use the full amount of power contracted for. It is the experience of all power companies

(199) that the power sold and collected for is always less than that contracted to be sold. It is our opinion that not more than 90% of the amount of power stated above will be sold and paid for, and we are estimating the production and revenue on this basis. This estimate shows that the project can probably sell 25,524,000 KWH of primary power for a total of $218,141, and 12,711,600 KWH of secondary and dump power for $47,777, giving a total revenue of $265,918. As to the operating cost, we have estimated that the project will have to pay taxes on property outside of Greenwood County, but we have not included any allowance for hydro generating tax.

Our estimate of taxes on property outside of Greenwood County, exclusive of land, is $35,946 per annum; taxes on 9,000 acres of land at 20 cents, $1,800. Insurance liability and employees—6% of payrolls, $2,260, and $260 for fire insurance.

Maintenance, which includes supplies and ordinary repairs, $16,000. Wages, $38,680. Office rent telephone and supplies, $420. Traveling expenses and miscellaneous $2,400. Reserve for depreciation and betterments, as provided in the contract with the P. W. A., $60,000. Interest and capital retirement at .0578, $205,953. The total is $363,729.

In order to make the Buzzard Roost project self-liquidating and self-supporting the rates at which the County proposes to sell power would have to be increased about 44% for the primary power. I do not believe the rates for secondary power could be increased. This increase in rates would have to be made even with the County having the benefit of the grant the federal financing, and the tax exemption on all property in Greenwood County. The market for secondary power is quite limited unless the rate is extremely low. I understand that the County has a contract with the Panola Mills but I do not think there is an opportunity to sell any other secondary power in that territory unless the rate be very low.

If the County did not have the benefit of a federal loan and grant from the PWA it would not be able to finance this project on the basis of revenue bonds. In the first place the rates would have to be substantially higher than they are, and in the second place, which is more important, they would be calling on the prospective purchaser to take a bond where he had 100% of the risk,

(200) and a limited participation in the profits if there were any. I have been interested in financing several power companies, and I think I have a good working knowledge of the type of security they have to offer to investors. In the absence of federal financing the rates of the Buzzard Roost project would have to be increased to the extent that they would substantially exceed the present Duke rates.

W. G. PERRY, a witness for the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

I am a civil engineer having graduated from Clemson College in 1912. I worked on surveys of various kinds during the summers while I was at Clemson, and upon graduation I was employed as levelman on a Government drainage survey. This job lasted until January 1, 1913, or about six months. I was next employed by the Southern Power Company on transmission surveys and I spent the entire year 1913 on various surveys working as transitman and head of party. About the first of 1914, construction was started on the Lookout Shoals hydro electric plant, located on the Catawba River, at Catawba, N. C., and I was assigned as Assistant Resident Engineer on this job. This development involved a concrete dam about 80 feet high, containing over 200,000 cu. yds. of masonry, and the installation of generating equipment rated at 33,000 H. P. I located the main line railroad to this job and assisted the contractor in his preparatory work such as crusher and mixer plant erection, plant railroad installation, equipment erection, temporary buildings, compressor and pipe line installation, cofferdams, etc. I did all layout work in connection with the dam and power house and worked up all estimates on this job. This work was completed about April, 1916, and I was moved to Fishing Creek Station in South Carolina, which job was then about half completed. This development involved the construction of a concrete dam about 50 feet high, containing about 90,000 cu. yds. of masonry, and the installation of generating equipment rated at 44,000 H. P. There I had charge of the layout work around the power house until the big flood of 1916, when

(201) I was sent back to Lookout Shoals, as Resident Engineer in charge of the repairing of the flood damage. This work consisted mainly of extending the original spillway section and building an earth dam, of about one-half million cu. yds., across a new channel washed out by the flood. This work was still in progress when I left to go in the Army, in May, 1917. I was in the Army for about two years and was commissioned as 2nd and later 1st Lieutenant of the Engineers. I went to France in November, 1917, where, after going to various schools, I was engaged in ranging work with the American Artillery on various sections at the front. I returned from France in April, 1919, and again went to work for the Southern Power Company. After several months of topographic surveys, I was assigned to the construction job at Bridgewater, N. C. This was a hydro-electric power and storage development involving three earth dams containing about five million cu. yds., a concrete dam containing over 100,000 cu. yds., and a power house with an installation of 26,000 H. P. I worked on this job, as Assistant Resident Engineer until January 1st, 1920, when I resigned and went with J. E. Sirrine & Company. I have been with them ever since. My work with Sirrine & Company has been of a wide variety. In addition to industrial buildings, I have handled almost all of the hydro-developments and special foundation work that has come into the office. This included a number of small hydro jobs. I have also visited many large developments in various part of the country. These included several of the newer Duke jobs, the Conowingo job the Norwood job and a number of smaller ones. I have always been particularly interested in hydro construction, and have tried to keep in touch with improved methods of construction. I have worked on many appraisals of various kinds during the fifteen years with Sirrine & Company. During the past four years I have been in charge of all electric property appraisals. During this time, in addition to the Southern Public Utilities Company and Duke Power Company jobs, I have worked on the Carolina Power & Light Company property, and a number of smaller jobs in Alabama and Mississippi and South Carolina.

During August, 1934, Sirrine & Company were employed by the Duke Power Company to make a report on the proposed Buzzards Roost Development of Green-

(202) wood County, S. C. Since that time I myself, and a number of other members of the organization, have been working intermittently on this report. All work in connection with the reservoir, dam, intake canal, power house and spillway, and tail race has been done by myself and by men immediately under my direction. All work in connection with the power house equipment, transformer station, transmission lines and rural lines, substations, and power production estimates has been done by or under the direction of Mr. George Wrigley. All work in connection with all features of this report has been supervised in a general way by Mr. J. E. Sirrine. I have assisted Mr. Sirrine in the preparation of the testimony which he has introduced in connection with the reservoir, dam and other hydraulic structures. This part of the report is correct and I adopt it as my testimony in this case. I refer to the report which he read into the record as a part of his testimony.

GEORGE WRIGLEY, a witness for the plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

I am a resident of Greenville, S. C., and a member of the firm of J. E. Sirrine & Company. I graduated at Alabama Polytechnic Institute, Auburn, Ala., in 1897, and completed a post graduate course in electrical and mechanical engineering at the same college in 1899. I went in July 1899, with the General Electric Company at Schenectady, and was in the employ of that company until July, 1906, when I went with Mr. J. E. Sirrine in Greenville. During my employment with the General Electric Company, I was in the Test Course, Transformer Designing Department, Commercial Engineering Department and District Engineer of the Atlanta office. In the employ of the General Electric Company, I went to Mexico in 1903, and was there for nine months as Resident Electrical Engineer on the Guanajuato Power Company's hydro-electric plant, long distance transmission line and distribution system.

I am in direct charge of all electrical planning work handled by J. E. Sirrine & Company. This work, in ad-

(203) dition to general industrial designing, has included the electrical installations:—*Hydro-Electric Projects—Complete new plants*: Electric Mfg. & Power Company, Gaston Shoals; Savannah Power Company, Gregg Shoals; Albany Power Company, Albany, Georgia; Belton Power Company, Belton, S. C.; Seneca Light & Power Company, Seneca, S. C.; R. F. Lenhardt, Liberty, S. C.; Reedy River Power Company, Boyd's Mill; and Reedy River Power Company, Sullivan's Shoals. *Hydro-Electric Project—Partial Rebuilding and/or new Equipment*: Piedmont Mfg. Company, Piedmont, S. C.; Enoree Mills, Enoree, S. C.; Cliffside Mills, Cliffside, N. C.; Enterprise Mfg. Company, Augusta, Ga.; Sibley Mfg. Company, Augusta, Ga.; Coolemee Mfg. Company, Cooleemee, N. C.; Conestee Mills, Greenville, S. C., and Norris Cotton Mills, Cateechee, S. C. *Transmission Lines*: Electric Mfg. & Power Company; Tucapau Mills, Pickens, S. C. from Easley, S. C.; Seneca Light & Power Company; and Reedy River Power Company. *Distribution Systems*: More than 65 industrial villages.

I participated in the preparation of the report Mr. J. E. Sirrine has read into the record in this case as part of his testimony. All work in connection with the power house equipment, transformer stations, transmission lines and rural lines, substations and power production estimates, has been done by me or under my direction. Those parts of the report are correct and I adopt them as my testimony in this case.

CROSS EXAMINATION.

With the exception of the Mathews Cotton Mills, which uses some current from Duke, there is no cotton mille in Greenwood County which uses Duke Power. Most of these textile plants have their own steam power plants. Greenwood Cotton Mills, Nos. 1 and 2 have old Corliss engine steam plants; Mathews Cotton Mill has a Corliss engine plant built about 1912; the Ninety-six Cotton Mills has a steam turbine plant built in 1926; Panola Mills has a steam turbine; Grendel Mill has a steam plant; Newberry Cotton Mills in Newberry County has quite an old steam plant; the Bailey Mills in Clinton, in Laurens County, have a relatively new plant, built in the last year or two; so does the Lydia Cotton Mills. I have heard that these steam plants also furnish electrical

(204) energy for the town of Clinton. The Ware Shoals Mills in Greenwood County have their own power plants, partly hydro-electric, partly steam. Their steam plant was built in several units, from 1918 through about 1930. There are no other mills in Newberry or Laurens Counties using steam that I know of.

I haven't a direct figure in mind, but I can make this statement: that at approximately a load of 2,500 kilowatts at the present price of coal, and assuming a modern efficient steam plant, and assuming its fixed charges, and that it is a condensing plant for power only, the cost is very little different from purchased power. In my opinion it would be practically an even break, for a mill using that much power, between the cost of purchasing the power from the Duke Power Company and the cost of producing it by a steam plant.

RE-DIRECT EXAMINATION.

In making the statement that the cost of producing power by a 2,500 kilowatt steam plant, at the present price of coal, would be approximately the same as purchasing this amount of power from the Duke Power Company at its present rates, I assumed that such a mill would operate regularly. If the mill operated irregularly the cost of a steam plant would be a little higher. The difference would depend upon the extent of operation.

I am reasonably familiar with the textile mills and other industrial plants of the piedmont section of North and South Carolina, particularly that part of the piedmont section served by the Duke Power Company, and know that a great majority of such textile and other industrial plants in this section are served by the Duke Power Company.

C. P. ROBERTS, a witness for the plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

I am a civil engineer, a member of the firm of Johnson & Roberts, of Marion, South Carolina, and that firm

(205) is composed of Colonel Johnson and myself, as a partnership.

Since this report has been prepared by Colonel Johnson and myself, I will mention some of his qualifications as well as my own. He was the first Chairman of the South Carolina State Highway Commission, and before that time he was Chairman of the Marion County Highway Commission and its Chief Engineer, and built about 100 miles of road and about 30 bridges under the first county bond issue in the State of South Carolina, back in 1908 to 1911. He was also Colonel of Engineers of the Rainbow Division during the War. He was a member of the Boundary Commission in the line dispute between North and South Carolina in 1928 or 1929—I have forgotten the year. Now I graduated from Clemson College in 1910 in civil engineering. For two years after that I was in railroad construction, and built the railroad between Wards, South Carolina, and Saluda, in the general neighborhood of the work that is being done here. I not only did the engineering on that job, but it was built by contract with day labor, and the superintendent died after I went there and I had charge of the entire construction—all of the accounting as well as the engineering, which gave me a better opportunity to arrive at cost prices and things of that kind. In 1912 I went to Marion and since then have been associated with Colonel J. M. Johnson in general engineering and construction work. We have built three major bridges across the Great Pee Dee River, involving clearing and grubbing, earth work, steel and concrete, and practically all of the items which are involved in this project. We have also built three bridges across the Little Pee Dee River. We have done the engineering on paving in a considerable number of towns in the lower part of the State. We have done the engineering on four big drainage systems, involving quite a large amount of clearing and of earthwork. For a good many years we have made investigations of the rivers in South Carolina and their floods. In the floods of 1916 and the floods of 1928 and 1929—those principal floods and other floods after those floods, there were *quire* a number of lawsuits for damages on the rivers in South Carolina. We have made investigations for, I would say, somewhere between 50 and 100 of those lawsuits, and have for a long period of years studied in minute detail the flood conditions,

(206) size and necessary openings, and things of that sort, on all the principal rivers in South Carolina. On the Saluda River we spent several weeks studying the floods on that particular river. In 1932 we were with the South Carolina Railroad Commission as consulting engineers in the valuation of the Broad River properties. In 1933, we were with them in valuation work of the Carolina Power & Light Company. In January, 1934, the firm of Johnson & Roberts, of which I am a member, was employed by the Duke Power Company to study and investigate the proposed Buzzard Roost power project. Since that time I have spent a large portion of my time in these studies. Previous to this time we had spent several months in the study of floods in the Saluda River. The U. S. Corps of Engineers had made a study of this project and during the time of our studies published a report on this project along with others in the Santee System. We have used this published information along with considerable additional information compiled by them and not contained in the published report. We have supplemented this information by examinations and surveys made of the plant site and the location of the various roads and railroads crossing the reservoir. We first studied the application of Greenwood County to the P. W. A. and appeared before the Board of Review on July 2, 1934. Since our report and hearing on the plans as then proposed numerous changes have been made in the plans, a number of which were suggested by us.

After carefully studying the present plans and specifications we find that:

No land outside the reservoir is included;

The price of clearing low and a large part of the necessary clearing omitted;

Inadequate provision for by-passing the river during construction;

The amount of rip rap underestimated;

The cost of excess excavation omitted, which may or may not be changeable to the County;

The spillway about two-thirds the necessary capacity with a "fuse plug" which is dangerous;

Cost of secondary lines, transformers, meters and house connections evidently omitted for rural lines;

(207) Poles on main transmission lines too far for uninterrupted service;

The cost of raising roads, railroads, and wire lines greatly underestimated;

The annual operating cost underestimated;

The available power overestimated.

BUZZARD ROOST PROJECT

ESTIMATED COST

Preliminary Costs:			$25,000
Lands			
Reservoir & Plant site	16,800 Ac.	$25.	$420,000
Transmission Right of Way	3,320 Ac.	50.	25,600
Acquisition	84 Mi.	80.	6,720
Rural Lines	100 Mi.	50.	5,000
	Sub-Total		$457,320
Amount of Bids:			$1,191,578
Erection Engineers on Equipment, etc.			8,500
House and Yard Lighting, etc.			3,000
Errors in quantities:			
Earth excavation	$20,912		
Rock excavation	33,527		
Class A Concrete	14,279		$58,718
Changes in Design:			
Top width of dam 20′ instead of 10′ 35,200 c. y. @ .39	$13,728		
Rolling entire dam	17,540		
Riprap	12,186		
Sodding slopes	5,019		
Two additional floodgates	132,883		
Excess earth excavation	10,994		
Tailrace excavation	30,500		$222,850
Total bids with necessary changes— Sub-Total			$1,484,646

(208) *Items on which Bids Have not Been Received*:

Clearing	8,000 Ac.	$40.	$320,000
Substations			213,492
Main Transmission Lines	84.3 Mi.		273,975
Rural Lines	100 Mi.	$1754	175,400
Highways, Railroads & Wire Lines:			
C. & W. C. Railroad	$185,200		
Seaboard RR—River	213,240		
Seaboard RR—Cane Creek	123,355		
S. C. Highway No. 7	33,000		
S. C. Highway No. 10	37,025		
Power Line	45,000		
County Roads & Wire Lines	12,000		$648,820
Operators' Cottages			$10,000
Shop, Testing Equipment, etc.			7,000
Maintenance truck equipped & 2 autos			5,000
Total not covered by bids—			$1,653,687
Total bids with necessary additions—			$1,484,646
			$3,138,333
Preliminary:			$25,000
Land:			$457,320
Construction Costs:			$3,138,333
Engineering:			
6% of Construction and Land	$215,739		
Less Surveying included in Land & Transmission Costs	22,700		$193,039
Legal & Administration:			$75,000
Interest During Construction:			96,200
Contingencies & Hazards—5%			$199,244
TOTAL COST—			$4,184,136

C. P. ROBERTS.

(209) The items covered by bids received to date by the County amount to $1,189,536.22. To this must be added the per diem and expenses of the erection engineers for gates, turbines and electric equipment, the cost of supplying electric current to the contractors during construction, and the cost of wiring and lights for powerhouse and yard. These items will increase the cost approximately $11,500. For the plans and design on which bids were received, the estimated quantities appear to be substantially correct except for the earth and rock excavation in the powerhouse and spillway section and the quantity of Class A concrete in the spillway.

These three errors in the necessary quantities for the plans on which bids were received amount to:

Additional earth excavation	$20,912
Additional rock excavation	33,527
Additional Class A concrete	4,279
	$58,718

The above quantities are calculated to the lines and grades shown in the plans. The probability is that additional rock must be excavated and replaced with additional concrete in order to procure safe foundation.

The designs should be changed as follows: Top width of dam should be increased, the entire fill should be rolled, riprap should be extended and increased in thickness, the dams must be sodded, and the fuse plug should be omitted, and flood gates of sufficient capacity installed. The added width will require 35,200 C. Y. at 39 cents, amounting to $13,728. There is a tremendous difference in seepage through a rolled and unrolled fill. The shrinkage, if excessive, may be dangerous to the safety of the dam. A movement once started may move a much greater mass that would otherwise be stable. All the fill should be rolled. This will cost about three cents per cubic yard and will increase the material required at least 5% both applied only to the unrolled two-thirds. This will make an additional cost of $17,540.

It is necessary to cover the upstream face of the dam with riprap for protection against wave action. Riprap must extend above highwater and below low water, Wave action will be heavy due to the long straight line

(210) of open water in the reservoir. Rip-rap should be placed two feet thick between elevation 449 and 417. This will require 12,260 cubic yards. Only 4,136 cubic yards are provided. The additional amount of 8,124 cubic yards at the bid price of $1.50 will increase the cost by $12,186. The dam must be sodded with bermuda or other grass above the rip-rap, across the top and down the lower side of the dam. The cost will be about 15c per square yard or $5,019.

The most serious defect in the design is the lack of provision for proper spillway for the passage of floods and an attempt to provide proper openings for flood passage by the construction of a "fuse plug". The fuse plug idea is a haphazard attempt to save expense, but with considerable danger attached. The County's plans show four gates and a fuse plug. The Corps of Engineers recommended six gates. When this fuse plug functions as designed, the water will be discharged at a velocity sufficient to move any material except solid rock. The channel will widen and cut down until stopped by solid rock or until the reservoir is emptied. This will artificially increase the height of the flood downstream and place an additional burden on the Lexington dam when it would already be taxed to capacity. The fuse plug is cheap in initial cost, but to deliberately plan to handle floods in this makeshift manner is not exercising due regard for lives and property below the dam. We consider that the "fuse plug" is impracticable and that 6 gates are necessary. The additional cost will be $132,883.

The plans provide for the omission of the tail canal excavation and the construction of a pilot channel only. As this omission of excavating a proper tail race channel will be unsatisfactory and probably more expensive in the first few years of operation, we are including the necessary excavation. This amounts to 122,000 c.y. at 25c, $30,500.

LAND	16,800 Ac. at $25	$420,000

The area of the reservoir at normal full pond is 12,000 acres. Extreme floods will increase the height of the pond four feet at the dam and five or six feet at the

(211) upper end of the reservoir. The County provides for the purchase of the lands flooded at normal water plus a 50 foot strip. Were such a limited purchase possible, frequent high waters would flood unowned lands and would result in many expensive law suits. We know of no record of any reservoir where purchases were confined to the exact flow line. It is our opinion that an absolute minimum purchase outside the reservoir would be 3,600 acres, equivalent to 40% of the area flooded. This is to include area above normal water, and in addition the spillway, tailrace and plant site. We have calculated a cost of $25 per acre to include cost of purchasing, surveys, maps, abstract of title and cost of condemnations, in addition to the amounts paid to the owners. This is less than similar reservoir areas usually cost. Early purchases will probably average less than $25 but later purchases from unwilling sellers will materially increase the average. The easements for main transmission lines will cost not less than $50 per acre for a strip fifty feet wide, plus $80 per mile for costs of purchase, surveys and legal. This amounts to $380 per mile. For rural lines a minimum cost of $50 per mile is allowed for the expense of surveys, obtaining and recording deeds, etc. No allowance is made for payment to owners, assuming that rights-of-way will be donated.

CLEARING	8,000 Acres at $40	$320,000

The government maps and calculations show that 74% of the reservoir is to be cleared. To be conservative we have assumed that only 64% of the reservoir plus a 25 foot strip is wooded and that 36% is in fields. The County omits the clearing in the center of the reservoir in all the area below elevation 410. This elevation is 30 feet below normal full pond. It will not be practicable to leave this area uncleared. The uncut trees will be covered for less than half their height, will immediately die and soon cover a large portion of the reservoir with floating driftwood. This will form an ideal mosquito breeding place of thousands of acres. Except when carried by wind, the flight of the malarial mosquito is supposed to be limited to not more than a mile. The edge of the area proposed to be left uncleared, however, is usually less than two hundred yards from the

(212) shore line. Also, this drift will obstruct the spillway gates and a small flood could easily wreck the dam. The clearing will cost not less than $40 per acre. The cost of clearing is largely common labor, and as the P.W.A. minimum price for common labor is 40 cents per hour, this clearing will be relatively high. Our experience is that clearing costs vary between $60 and $150 per acre.

HIGHWAYS, RAILROADS AND WIRE LINES.

The most serious expense will be in the changing of the railroad crossings. Saluda River and Cane Creek are crossed by the main line of the Seaboard about nine miles above the dam, and the C. & W. C. crosses the river about 13 miles above the dam. Both railroads have steel bridges on masonry or concrete piers, with timber approach bridges.

We have re-estimated the cost based on replacing the timber bridges with steel plate girders on concrete piers. This is not an unreasonable requirement as the timber bridges will be in water averaging 30 feet deep at the Seaboard and 25 feet deep at the C. & W. C., making repairs expensive and rebuilding very difficult. The total for the C. & W. C. is $185,200; for the Seaboard at Saluda River it is $213,240; and for the Seaboard at Cane Creek it is $123,355. We have not included the cost of reinforcing the present river piers, the cost of extra maintenance of the new track or the cost of bond to protect the railroad against accidents.

For the S. C. Highway No. 7 (Cothran Memorial) bridge, it will be necessary to widen the fills to a slope of 2 to 1 and riprap not less than two feet thick. This will cost $33,000. The S. C. Highway No. 10 crossing should be reconstructed at about a cost of $41,400. At Reedy River on S. C. Highway No. 10 the present bridge is 8 feet below water. The present construction can hardly be raised and a new crossing should be constructed at a cost of $32,650. As these crossings would be superior to the present ones, it is our opinion that the S. C. Highway Department should be willing to bear half the cost, leaving a net cost to the project of $37,025.

The Duke Power Company's 100 KV double circuit steel tower line crosses the reservoir about three miles above the dam where the reservoir is two miles wide. (213) Seventeen steel towers are situated in the pro-

posed reservoir. To accord with general practice and this company's method in its own past construction, it will be necessary to rebuild this line with no towers in the water. This will require a rebuild of about three miles with long spans and special conductors at an estimated cost of $45,000.

SUMMARY HIGHWAYS, RAILROADS & WIRE LINES

C. & W. C. Railroad	$185,200
Seaboard Railroad—River	213,240
Seaboard Railroad—Cane Creek	123,355
S. C. Highway No. 7	33,000
S. C. Highway No. 10	37,025
Power Line	45,000
County Roads & Wire Lines	12,000
	$648,820

OPERATORS' COTTAGES, SHOP AND TESTING EQUIPMENT and maintenance truck and service autos. None of these necessary expenses are provided for by the County. We have estimated $22,000 as the cost of minimum requirements. Actual costs will probably double this amount.

OVERHEADS

For Engineering we have used 6% of construction costs and land which is in accordance with Mr. Duncan's contract with the County. For Legal and Administration we have used the County's estimate, plus $20,000 as an increase in legal costs. For Interest we have used the same rate and time on the larger cost. For Contingencies and Hazards we have used 5%.

ITEMS FOR WHICH NO COSTS HAVE BEEN ADDED

SPILLWAY FOUNDATIONS

The plans of construction should not be undertaken

(214) without a very much more thorough investigation of foundation conditions. The least precaution necessary is a reinforced concrete pavement extending 70 feet downstream from the spillway. Investigation may well dictate a very much deeper foundation. Either remedy will greatly add to the cost of construction.

APPROACH CANAL

The velocities in the approach canal are excessive and dangerous. We have not included cost of enlarging.

PASSAGE OF WATER DURING CONSTRUCTION

The provision for the passage of water during construction is inadequate. As planned, there are inherent dangers which must be provided for. We have added no amount in our costs for this expense. The method adopted by the County is inadequate and dangerous with the County definitely assuming the responsibility.

ADDITIONAL TRANSMISSION LINES

Numerous towns and industries are listed as possible customers for the sale of the balance of the available power. Should sales be made to users not situated on the proposed transmission lines no provision is made for the cost of the necessary transmission lines.

TELEPHONES

No provision is made for telephones. A line should be constructed connecting the plant with all substations and with the main office. The cost of these lines is not included by us.

ANNUAL COST

Taxes—Property outside of Greenwood County:	
Structures $1,574,448 x 42% x 47 mills	$31,080
Lands 8,400 acres at 20c	1,680
Insurance, Liability & Employees—5% of Payrolls	1,510
Fire	300
Maintenance, Supplies & Ordinary repairs ½ of 1%	21,200

(215)

Labor		
Plant Superintendent	$2,000	
5 Operators	6,000	
1 Helper	1,000	
Laborers on Maintenance including Mosquito Control	5,000	
Transmission Lineman	1,800	
2 Helpers	2,400	
Meter reader & Repairman	1,800	
Stenographer & Bookkeeper	1,200	
General Manager	4,000	
Legal, etc.	1,000	$26,200
Office Rent, telephone, etc.		360
Depreciation Reserve		67,600
Interest and Capital Retirement—.0578		202,423
TOTAL ANNUAL COST		$350,003

The above interest and capital retirement is based one the contracted amount of the grant of $682,000. Should the P.W.A. furnish the additional funds necessary with the additional grant, the annual cost of interest and capital retirement will be $190,417, reducing the total annual cost to $337,997.

TAXES. We have included taxes on lands outside of Greenwood County at 20 cents per acre, and on property outside the County at 47 mills on 42% of the cost, which is the rate in the school district in which most of the property will be situated.

ANNUAL OPERATING REVENUE

We have carefully calculated the power output of the proposed plant and find the maximum primary available to be 26,650,000 K.W.H. per year. We considered secondary power as power available 18 to 24 months during any 3 year period. The average price for primary power contracts listed in the application is 8.5 mills, while the one secondary contract is at the rate of 5 mills. On the basis of the above amounts and rates corrected for the change in drawdown, the average annual operating revenue will be:

(216)	26,650,000 KWH Primary	at .0085	$226,525
	9,000,000 KWH Secondary	at .005	45,000
	Total Annual Revenue		$271,525

The above is based on the assumption that the County will always have customers to consume 100% of all the primary and secondary power available, an ideal impossible in actual operation. Periods of maximum consumption will not coincide with the periods of maximum water. Customers cannot be added during depressions and dropped during good times. The County cannot depend on an average net annual income of more than 90% of the above or $244,372. It is possible that some dump power will be sold. It is also very unlikely that they will be able to sell 9 million KWH secondary power at 5 mills. That amount I have put to cover the amount that in my opinion they will be able to sell of what is called secondary and dump power combined. I put all the estimated revenue as the revenue on secondary power.

CROSS EXAMINATION.

I am not an electrical engineer, nor is Mr. Monroe Johnson. Our firm has never built a hydro-electric plant nor a dam of any considerable size. We were employed by the Duke Power Company on the Buzzard Roost Project on January 9, 1934; we were also employed by the Duke Power Company to make an investigation of the proposed Santee-Cooper project and we appeared in opposition to that project before the South Carolina Legislature of 1934.

Duke Power Company filed a protest against the Buzzard Roost Project with the Public Works Administration and we attended a public hearing by the Administration in July 1934. I was present during the entire hearing though my senior partner, Mr. Johnson testified with regard to the engineering matters.

We prepared a report on the cost of the project for the Duke Power Company in May 1934, showing the cost of the project as $3,667,499. A copy of this report was filed with the PWA at the hearing in July 1934. The plans on which this estimate were made and the plans

(217) submitted by the County to the Federal Power Commission were different. You might say the plans were based on two different systems. In our report of May 1934, filed with the Duke Power Company and with the Public Works Administration, we estimated $377,441 for raising and rerouting highways, railroads and power lines, which I have estimated at the present time at $648,820. The difference between these costs is due principally to the substitution of steel for timber in the railroad bridges. In my opinion the amount of land which the County would require for the project would be at least 16,000 or 17,000 acres. The form of option used by the County expressly says that the purchase price does not include improvements, does not include crop damages, and on several of them there are other reservations. The options do not include the dam site, particularly on the Newberry side. Most of the options have expired. It is always our experience in matters of this kind that the first lands purchased are always cheaper than the last. The last ones are higher.

RE-DIRECT EXAMINATION.

The price you have to pay for the land is quite different when it is necessary to buy a certain piece of land and the owner knows it is necessary for you to have that piece, than it is where you are purchasing land from an owner willing to sell, and if you cannot get one piece you can take another. When you are purchasing land for a hydro-electric development, such as the Buzzard Roost project, you have to purchase a particular tract of land and no other, and that makes the price you have to pay far higher. The reasons the price goes up as you go along is that you usually buy the cheap land first and deal first with those who are willing to sell.

Referring to my report of May 1934, in which the estimated cost of the project was given at $3,667,499, and my subsequent estimate of the cost, between the dates of these estimates changes were made in the County's plans. The work to be done in the different plans of the County is different, and, of course, the estimates are different, but where the items are the same they are in almost every instance priced at the same amount. The

(218) report of May 1934 contemplated a project which would be confined to Greenwood County alone, with a powerhouse and spillway at a different location from the one now proposed, and in many other particulars the project then contemplated is entirely different from the one now proposed.

We changed our estimates for the railroad bridges and tracks from timber to steel for this reason. At the time we made our May report, we had not discussed the matter at all with the railroads as to what their requirements would be, and we were, to a large extent, misled by the fact that the railroads had made up some estimates for the County on timber bridges. And with this in view, we didn't want to say that the railroads wouldn't accept timber bridges. In our opinion, they should not do it, and it is not proper engineering to do it, but the County had estimates on the timber bridges from the railroads and with that facing us we did not want to say that the railroads wouldn't accept timber bridges. The estimates from the railroads to which I refer are the estimates contained in Mr. Willoughby's letter of November 14, 1933, to Mr. Duncan and Mr. Faucette's letter of November 17, 1933, to Mr. Duncan. It would not be suitable for the railroads to use timber trestles under water. In my opinion the bridges should be on concrete piers on that portion that is in the water. The Highway Department almost entirely uses concrete pile and concrete piers. They use very little timber. In water it is very much more important for railroads, with heavy loads, than it is for a highway.

The bids which have been received by the County relate to those parts of the work on which there was very little difference between our estimates and the estimates of the County. No bids have been received on the items on which there was a material difference in the estimates of cost.

The difference of about $61,000 between Mr. Duncan's original estimates and the bids received is due to the following:

(1) The omission in the bids of services of erection engineers and of the lighting system.

(219) (2) The substitution of cheaper gates and the omission of rakes for trash racks.

(3) Errors in quantities.

(4) Substitution of cheaper construction for earth fill.

F. H. COTHRAN, a witness for the plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

I am engaged in the business of Consulting Engineering and have had 35 years of continuous engineering and construction experience. Beginning in 1899, the major engagements have been as follows: Rodman, draftsman and instrumentman, beginning with the Southern Railway and later with Seaboard Air Line Railway through 1899 and 1900. With the U. S. Geological Survey as primary levelman during 1901. Assistant Engineer Cranes Nest Coal Company for a part of 1902. Remainder of 1902 as engineer in charge of a railway survey party, South and Western Railway (now Carolina, Clinchfield and Ohio Railway). Resident Engineer Virginia-Pocahontas Coal Company, 1903, in charge of the Coalwood West Virginia Development. Assistant locating engineer and later resident engineer Coal and Coke Railway (later owned and operated by the B. & O. Railway), assisted in the location of about fifty miles of this line, and had charge of the construction of a heavy residency including a tunnel and several bridges. Between 1905 and 1908 was locating engineer and later engineer in charge of several locating parties with the South and Western Railway; made the location of some of the heaviest work on this line. From 1908 to 1911 made location of the proposed Bristol & Kingsport Railway, the proposed Atlanta Northeastern Railway, also participated in general engineering and contracting practice. From 1912 to 1914 was employed by the Piedmont and Northern Railway as locating engineer and as Division Engineer in charge of construction. Had charge of the construction of the second division (Char-

(220) lotte to Gastonia) and of the third division (Greenwod to Spartanburg) of that line. During 1914 was engaged as engineer in charge of field surveys Quebec Development Company on the Saguenay River in the Province of Quebec. This work included railway, land topographic, and hydraulic surveys for large hydro-electric projects. During 1915 was engaged as engineer in charge of field surveys of a large part of the Catawba River Valley. During 1916 to 1919 was resident engineer in charge of the Bridgewater development of the Western Carolina Power Company. This project involved the construction of four large earth dams, a tunnel and a power plant along with appurtenant works including fifty miles of highway, and revision of the C. C. and O. R. R. bridge, fills and culvert. After July, 1916 flood, had charge rebuilding Lookout Shoals Dam, which was damaged by blowout of the earth dam "fuse plug". During part of 1919 and through 1922, I was employed as division engineer—Southern Power Company, during which time I had charge of numerous jobs including 45,000 K.W. additions to the Mount Holly and Eno Steam Plants, the construction of a pumping plant for the City of Charlotte, N. C., the reconstruction of the Rozzells Ferry Highway Bridge, and the maintenance of the Bridgewater earth dams. From 1922 to 1926 was Vice-President and General Manager of the Alma and Jonquierre Railway, the Quebec Development Company, and the Duke-Price Power Company. This work involved the construction and operation of a short line railway and the construction and placing in operation of a large hydro-electric plant and transmission system, (545,000 H. P.). This work included the construction of an earth dam, mansonry dams, a power plant, highway construction and additions to the Canadian National Railway necessary to its protection from the impounded waters. During this period had charge of preliminary construction incident to the building of the Chute-A-Caron—Shipshaw Hydro-Electric Development (ultimate—1,000,000 H. P.) including a seven mile extension of the Roberval-Saguenay Railway to the works. Also organized the engineering and construction force and had charge of construction of the Arvida, P. Q., Canada, Plant of the Aluminum Company of America.

From 1926 through 1928 was engaged as Chief En-

(221) gineer of the Piedmont & Northern Railway. Had charge of the location and preparation for construction of approximately one hundred and fifty miles of railway.

I also negotiated with the C. & N. W. Railway for the revision of their line made necessary by the construction of the Oxford reservoir of the Southern Power Company on the Catawba River, and was in charge of this construction. I also had general supervision of the reconstruction of the City of Greenville Water Supply dam after its partial failure.

From 1928 through 1932 was engaged as Vice-President, General Manager and Chief Engineer, Beauharnois Construction Company. This company contracted for and carried out the design, construction and placing in operation of the Beauharnois Light, Heat & Power Company's development on the St. Lawrence River. This work involved the building and placing in operation of a very large hydro-electric development, 2,000,000 H. P., ultimate, including earth dams, both of the rolled fill and hydraulic type, concrete dams, power plant, the relocation of the Canadian National and New York Central Railways, as well as highways, etc.

During 1933, was engaged as consulting engineer by the Beauharnois Light, Heat & Power Company. From 1933 to date have been engaged as consulting engineer on various projects in Canada and the United States.

To date, I have had charge of construction involving a cost of nearly 100 million dollars, most of this in hydro-electric projects.

Am a member of the following engineering societies:

American Society of Civil Engineers,
Engineering Institute of Canada,
The American Railway Engineering Association,
Corporation of Professional Engineers of Quebec,
Registered Engineer in North Carolina.

I was engaged about the middle of August 1934 to check into the proposed Buzzards Roost Project and since that time I have made studies and computations to determine the cost of constructing the project as outlined in the application of Greenwood County to the Federal Power Commission, and as revised in the plans and specifications incorporated in contracts 1, 2, 4 and

(222) 5 submitted by Greenwood County to contractors for the purpose of obtaining bids on this project. I have also calculated the primary, and the secondary and dump power available and have estimated the annual revenue and the annual operating expenses and capital charges. In these studies and calculations I have, wherever possible, given the project the benefit of the doubt, consistent with sound engineering.

I was assisted in my studies of this project by Mr. N. F. Noyes, an engineer with over twenty years experience in engineering construction work, mainly of hydro-electric power projects, by Mr. D. Nabow, Designing Engineer of the Duke Power Company who has had over eighteen years experience in the design of power projects, both hydro-electric and steam, and by Mr. M. R. Kimbrell and Mr. F. W. Lachicottee, both electrical engineers of long experience.

As outlined in some detail in the following report I find that:

1) To construct this project, with reasonable safety to the structures and with reasonable protection to property both upstream and downstream, will cost at least $4,085,451. This is $1,318,451 in excess of the $2,767,000 estimate of cost, given in the Greenwood County application.

2) The average annual cost of this project including the cost of operation and maintenance, property taxes outside of Greenwood County only, charges to depreciation and betterment reserve, interest, and capital retirement charge to make this project self liquidating, will be not less than $341,881 on the basis of a grant of $682,000 and exemption from all other taxes.

3) The average annual income from the sale of power over a period of years, will not exceed $252,000. On this basis there would be an average annual deficit of $89,881. This annual deficit can be made up only by increasing the rates for power about 35% if the increase is applied to all power sales, and about 42% if the increase is applied to primary power only.

4) If Greenwood County were not the beneficiary of

(223) the $682,000 grant from the Federal Government, the annual deficit would be increased by $39,420 to $129,-301 per year. To make up this increased deficit the average rate for all power would have to be increased over 50%. If only primary power is increased, a raise of 61% would be required.

F. H. C.

EXHIBIT #1

BUZZARDS ROOST PROJECT

SUMMARY OF COST OF DEVELOPMENT

	Unit	Quantity	Unit Cost $	Total Cost $
1) Preliminary	L.S.			7,000
2) Land				
a) Reservoir	Ac.	18,000	20.00	360,000
b) Easements—Transmission Lines	Mi.	84.3	400.00	33,720
Rural Lines	Mi.	100	25.00	2,500
3) Clearing Reservoir	Ac.	7,500	50.00	375,000
4) Relocation of Railroads, Highways and Wire Lines				
a) C. & W. C. Railway Crossing	L.S.			189,430
b) S. A. L.—Saluda River Bridge	L.S.			195,700
c) S. A. L.—Cane Creek Crossing	L.S.			126,275
d) Transmission Line	L.S.			44,100
e) Telephone Line	L.S.			6,000
f) Cothran Highway Bridge	L.S.			17,570
g) Reedy River Highway Bridge	L.S.			13,855
5) Main Transmission Line	Mi.	84.3	3,077	259,391

(224)

	Unit	Quantity	Unit Cost $	Total Cost $
6) Rural Distribution Lines	Mi.	100	1,725	172,500
7) Step-down substations	L.S.			200,000
8) Earth Dam				
a) Clearing & Grubbing	Ac.	11.5	200	2,300
b) Stripping Foundation	C.Y.	6,667	0.50	3,333
c) Core Trench Excav.	C.Y.	42,437	0.35	14,853
d) Excavation for Rock Fill Toe	C.Y.	43,560	0.12	5,227
e) Earth Fill	C.Y.	560,000	0.39	218,400
f) Rip Rap	C.Y.	12,600	1.50	18,900
g) Sodding	S.Y.	23,000	0.15	3,450
9) Excess Excav.—Approach Channel & Tailrace—Earth	C.Y.	280,000	0.20	56,000
10) Rock Excavation	C.Y.	65,000	3.25	211,250
11) Earth Excav. for P.H. and Spillway	C.Y.	51,000	0.65	33,150
12) Spillway Concrete	C.Y.	9,230	13.58	125,343
a) Reinforcing Steel	Lbs.	100,000	0.045	4,500
13) P. H. Blkhd. & Substr.	C.Y.	8,885	13.28	117,963
a) Reinforcing Steel	Lbs.	100,000	0.045	4,500
14) P. H. Superstructure	L.S.			29,000
15) Hydraulic Equipment	L.S.			181,100
16) Electrical Equipment	L.S.			343,900
17) Powerhouse Crane	L.S.			7,100
18) Flood Gates	L.S.			86,250
19) Penstock Gates & Hoists	L.S.			17,050
20) Trash Racks	L.S.			4,400

	Unit Quantity	Unit Cost $	Total Cost $
21) Walkway on Spillway	L.S.		3,600
22) Water Supply System external to P.H.	L.S.		4,000
23) Station Elec. Service	L.S.		3,000
24) Mics. Structures, Equipment & Supplies			
a) Operators Cottages	L.S.		12,000
b) Machine Shop, Office & Transp't'n Equip.	L.S.		5,000
c) Materials & Supplies in Stock	L.S.		7,000
DIRECT CONSTRUCTION COST (Incl. Prel. & Land)			3,525,610
DIRECT CONSTRUCTION COST (Excl. Prel. & Land)			3,122,390
25) Overheads			
a) Engineering	6% of $3,525,610		211,537
b) Legal & Administrative	L.S.		55,000
c) Interest during Construction 4%—9 mos. on $3,525,610+ 211,537 + 55,000minus $682,000 grant			93,304
Sub-Total Cost			3,885,451
26) Contingencies & Hazards			200,000
27) Total Cost of Development			4,085,451

I—COST OF PROPOSED DEVELOPMENT

The following data has been used as the basis for determining the cost of the proposed Buzzard Roost Project, as shown on attached Exhibit No. 1.

a) Application of Greenwood County to the Federal

(226) Power Commission, dated September 8, 1934. (This is referred to as "application" in the following discussion.)

Plans and Specifications submitted by Greenwood County to contractors for the purpose of obtaining bids on several portions of the work.

Based on the costs as shown on Exhibit No. 1, the portion of the work covered by the above contracts represents less than 50% of the total cost of the completed development.

A—ELEMENTS OF COST NOT COVERED BY CONTRACTS.

The following elements of costs of the development are not included in the plans and specifications of the above mentioned contracts.

1) PRELIMINARY

This item is estimated by the County in its application to the Federal Power Commission, at $7,000.00. In the absence of definite data, I have accepted this amount.

2) LAND

a) Reservoir.

The application estimate is based on buying only 566 acres more than the 12,000 acres at normal reservoir level. At the maximum high water level at El. 447.0, the reservoir area would be 14,000 acres, not considering the back water effect. The Bridgewater reservoir, the land for which was purchased under my supervision, has an acreage at normal reservoir level of 6,510 acres and at maximum flood level of 8,345 acres. The power company found it necessary to purchase, for this development, 20,731 acres. This is 2½ times the area at the expected maximum flood level. This is not an unusual condition. The following tabulation for the four latest large reservoir stations built in the Piedmont Section of North and South Carolina, shows that the power com-

(227) panies have found it necessary to acquire, for each reservoir, from 1.9 to over three times the acreage at the normal reservoir level.

Reservoir	Owned By	Normal Reservoir Area	Total Area Acquired	Ratio of Area Acquired To Normal Reservoir Area
		Acres	Acres	
Lexington	Lexington W. P. Co.	52,000	98,209	1.9
High Rock	Caro. Aluminum Co.	16,100	40,740	2.5
Catawba	Duke Power Company	12,455	41,573	3.3
Oxford	Duke Power Company	4,110	11,341	2.8
	Total	84,665	191,863	2.3

There are a number of reasons why more land has to be purchased than is covered by normal water level. During flood periods, the water level upstream of the dam rises to a higher level than at the dam and therefore unowned lands would be flooded if the land has been purchased to only normal reservoir level. Also in most cases, the water level would submerge a portion—in many cases the best portion—of individual farms. In such cases, the portions of the farms cannot usually be purchased for less than the entire tracts. Again, at each creek entering the reservoir, sand bars tend to be deposited. This raises the normal and flood water levels on the creeks and tends to damage the adjacent property.

As a minimum, 50% in excess of the normal reservoir area should be purchased to prevent flooding unowned lands and involving the project in future damage litigations.

The application is based on an average cost of $17.50 per acre. This, it is stated, is based on options which do not cover the entire property and which do not include the cost of acquisition. It is my opinion that as a minimum, the cost of this land, including cost of acquisition, would be at least $20.00 per acre.

b) Easements.

The transmission lines will have to be carried over private property and rights-of-way secured to permit

(228) access for maintenance. The Duke Power Company has two transmission lines which parallel about 75% of the transmission lines proposed by the County. One of these lines from Newberry to Greenwood was built in 1910, and the rights-of-way cost the company $879.00 a mile, including clearing. The line from Newberry to Laurens was built in 1924 and the right-of-way for this line cost the power company $1,687.00 a mile with the clearing and $1,537.00 a mile without the clearing. I have allowed, as a minimum, only $400.00 per mile of transmission line right-of-way, this to include the cost of acquisition and clearing. For the rural lines only the cost of acquisition is included at $25.00 per mile.

3) CLEARING RESERVOIR.

The application proposes to clear a total of 5,959 acres between contour Elevations 440 and 410, and 25 ft. back from the shore line. This is about 75% of the total acreage in the above area. To clear the reservoir in the manner proposed in the application would mean that tree tops would extend above the low water level over a large portion of the reservoir area. This would require the expenditure of additional large sums annually to control the breeding of mosquitoes, or would constitute a nuisance and a malarial hazard to the adjacent communities. This method of clearing would also involve the removal of debris at the powerhouse and at the floodgates for a number of years after the project is completed, thereby increasing the operating cost and presenting a hazard to the spillway structure especially at flood times. I do not consider it necessary to clear the entire area below El. 410, but as a minimum, 7500 acres will have to be cleared to render the reservoir reasonably safe.

The application allows $30.00 per acre for clearing. The Bridgewter reservoir, which was cleared under my supervision, has a normal reservoir area of 6,510 acres of which about 50% was cleared. The actual cost per acre cleared was $38.00 with labor averaging about 22¢ an hour. With the P. W. A. minimum wage scale of 40¢ per hour, this would mean about $70.00 per acre. As a minimum, the cost of clearing the reservoir at the Buzzards Roost Project would be $50.00 per acre cleared. The total cost of clearing the 7,500 acres will, therefore, be $375,000.

(229) 4) RELOCATION OF RAILROADS, HIGHWAYS AND WIRE LINES.

a) C. & W. C. Railway Crossing.

The present C. & W. C. railway bridge, across the Saluda River, consists of two steel trusses on stone masonry piers, with the top of the piers at El. 438, or 2 ft. below the proposed normal reservoir level. The approaches to this bridge consists of about 840 ft. of timber trestles about 30 ft. high. These wooden trestles with their longitudinal and transverse bracings will be submerged to a depth of about 25 ft. at normal reservoir level. This will render it impossible to inspect and to properly maintain this trestle to insure safety in operation. It would also be very expensive to replace any portion of the trestles with the necessary bracings. These timber trestles, under the above water conditions, would constitute an operating hazard and should be replaced with steel girders on concrete piers. At the end of these timber trestles there are, at present, earth fills varying in height up to 20 ft., and about 15 ft. of this height would be submerged at normal level on both sides of the fill. To make these fills stable, under the above water conditions, as well as under flood and reservoir drawdown conditions, it will be necessary to flatten the slopes and to protect them with stone riprap.

To rebuild this bridge and approaches so as to be able to operate with reasonable safety and without excessive maintenance will cost at least $189,430. This cost is based on a net clearance of only 5 ft., from bottom of steel to normal water level. This, in my opinion, is a minimum, based on the installation of 6 instead of the 4 flood gates as proposed by the County. If only 4 gates are installed the bridge would have to be raised higher at a material increase in cost.

b) The S. A. L.—Saluda River Bridge.

The main line of the Seaboard to Atlanta crosses the proposed reservoir about 9 miles upstream of the dam. The Saluda River bridge consists of three plate girder spans on stone and concrete piers with top of the piers at El. 437.7 or 2.3 ft., below the normal reservoir level.

(230) The approaches to this steel bridge consist of about 785 ft., of ballasted deck, timber trestles, about 35 to 40 ft. high. These would be submerged to a depth of 30 to 35 ft. at normal reservoir level. For the same reasons as outlined in my discussion of the C. & W. C. crossing, it will be necessary to replace the timber trestles with steel and concrete construction. Again, as in the case of the C. & W. C. crossing, the approach fills will have to be flattened and protected with stone riprap. To rebuild this bridge and its approaches, so as to be able to operate with reasonable safety and without excessive maintenance will cost at least $195,700. This is based on a minimum clearance of 5 ft. from the bottom of steel to normal reservoir level. This is probably less clearance than should be reasonably provided for this bridge.

c) S. A. L.—Cane Creek Crossing.

The Seaboard also crosses the proposed reservoir at Cane Creek. The present structure at this crossing consists of a timber trestle about 230 ft. long with earth fill approaches. The low point in the approach fills is at about El. 432.0 which is 8 ft. below the normal reservoir level. The economical method of taking care of this crossing would be to relocate on higher ground, about 300 ft. upstream of the present location. A steel and concrete structure should be built over the creek with earth fill approaches having flat slopes and protected with riprap. The cost of this crossing will be at least $126,275.

d) Transmission Line.

The Duke Power Company doubt circuit 100 K. V. steel tower transmission line from Newberry to Greenwood crosses the proposed reservoir about four miles upstream of the proposed dam.

To relocate the transmission line so as to make this crossing reasonably safe and reasonably accessible for operation and maintenance will cost $44,100, not including cost of right-of-way and clearing.

e) Southern Bell Telephone Company Line.

A telephone line of the Southern Bill Telephone Com-

(231) pany crosses the proposed reservoir about a mile upstream of the Seaboard Bridge. It will be necessary for the Southern Bell Telephone Company to rebuild about 1.5 miles of this line at a cost of $6,000.

f) Cothran Highway Bridge.

The Cothran Highway Bridge on S. C. Highway #7, crosses the proposed reservoir about 13 miles upstream of the proposed Buzzards Roost Dam. The present bridge consists of a 200 ft. steel span, 800 ft. of reinforced concrete trestles and earth fill approaches. The side slopes of the present earth fill approaches would have to be flattened and protected with stone riprap to make the fills stable for the water conditions of the proposed reservoir. The cost of flattening and protecting the present slopes, but not including raising the fills would be $17,570.

g) Reedy River Highway Bridge.

South Carolina Highway #10 crosses the proposed reservoir at Reedy River, about 2 miles above its mouth. This bridge consists of 2—55 ft. steel spans, about 300 ft. of wooden trestle and earth fill approaches. The present roadway of this bridge is more than 6 ft. below the proposed normal reservoir level. To rebuild the present one-way bridge with a similar structure and with minimum clearance above the proposed reservoir level will cost at least $13,855.

It is my understanding that the Saluda River crossing of this Highway #10 is no longer a portion of the State Highway system, but has been turned over to Greenwood County. Since the County may decide to abandon this crossing, I have not considered the reconstruction of this bridge.

h) County Roads and Bridges.

There will undoubtedly be a number of secondary roads to be relocated and small bridges to be built on a reservoir of the size proposed in the application. In the absence of definite data, I have made no allowance for this item.

(232) i) Resume.

To summarize, the total cost of the necessary railway, highway and wire crossings will be at least as follows:

C. & W. C. Crossing	$189,430
Seaboard Airline Crossing	321,975
Transmission Line	44,100
Telephone Line	6,000
Cothran Highway Bridge	17,570
Reedy River Bridge	13,855
TOTAL	$592,930

5) MAIN TRANSMISSION LINE.

The application proposes to build about 84 miles of 44 K. V. transmission lines from the powerhouse to Newberry, Clinton, Laurens and Greenwood. To assure reasonably dependable service to the power consumers, it is essential that this one transmission line should be built in accordance with safe and sound standards. The type of construction proposed by the county, being based on 600 ft. space of single poles, does not satisfy these requirements. To properly construct this line, either two pole H frames should be used with the longer spacing, or single poles should be used with shorter spacing. The H-frames would be the more economical of these two types of construction and would cost $3,077 per mile. This does not include the installation of ground wires. The total cost of the main transmission lines will be $259,391.

6) RURAL DISTRIBUTION LINES.

The application proposes the construction of 100 miles of 11 K. V. rural distribution lines and allows for same, a total of $100,000 or $1,000 per mile. This estimate of cost is insufficient. It will cost at least $1,725 per mile to properly construct the 11 K. V. rural distribution lines together with the necessary secondary lines, transformers, meters and other equipment necessary to render service to rural customers. The total cost of the rural distribution lines will not be less than $172,500.

(233) 7) STEP-DOWN SUBSTATIONS.

Since the installed generating capacity is 18,750 K. V. A., it will be necessary to install at least 18,750 K. V. A. of step-down substation capacity to take care of the entire output of the plant whenever there is sufficient water available. The total cost of the 18,750 K. V. A. of required substation capacity will be at least $200,000.

B—WORK COVERED IN CONTRACTS #1—#5 INCLUSIVE.

The items of construction as listed below are included in the plans and specifications forming a part of Contracts #1 to #5 inclusive, and on these bids have been submitted to the County. The low bids submitted by the several equipment manufacturers for the hydraulic, electrical and other equipment have been used as establishing the cost of materials. The unit cost bids as submitted for the general contract, by the low bidder, have been used as the basis for determining the cost of construction wherever applicable.

8) EARTH DAM.

The design of the dam as shown on the contract drawings calls for an unusual type of construction in that it is specified that only the middle third area is to be a rolled fill of selected materials, while both the upstream and downstream dykes are to be built by loose dumping. The use of materials of sharply differing densities in the 3 portions of the cross-section of the earth dam will introduce the problem of unequal settlement, and slides and slips are likely to result from such unequal settlement for a number of years after the dam is completed. In my opinion, the entire fill should be rolled. This would eliminate the dangers of unequal settlement, would increase the resistance to seepage, and would result in a more stable and satisfactory structure. However, if the method proposed in the contract is adhered to, sufficient overfill should be placed to take care of the settlement which will take place after the dam is completed. The contract drawings show that the County proposes to build the earth dam with a 10 ft. wide top. In my

(234) opinion, the 10 ft. top width is insufficient to take care of weathering and erosion. This top width is also insufficient for roadway necessary for maintenance.

At least 34,000 cu. yds. of additional fill should be placed. This overfill would eliminate the possibility of slopes steeper than 3 to 1 upstream and 2-1/2 to 1 downstream, resulting from the settlement of the fill. These slopes are, in my opinion, the minimum allowable for stability. The total yardage that should be placed in the dam, as a minimum requirement for adequacy, would be 560,000 cu. yds. At the bid price of 39c per cu. yd. this item would amount to $218,400.

Riprap.

The contract drawings call for a 1 ft. thick stone riprap extending 5 ft. above normal water level, and 1 ft. below a 15 ft. drawdown level. The bottom of the riprap will therefore be 4 ft. above the maximum drawdown level of 20 ft. while the top of the riprap would be 2 ft. below the maximum highwater level at Elevation 447.0, as shown on the drawings. In my opinion, this is insufficient. To properly protect the upstream face of the earth fill against wave action, the riprap should extend at least 3 ft. below the maximum drawdown level and to at least 5 ft. above the maximum high water level. Also, since hand placing is not specified, a 2 ft. thickness of riprap should be used. This will require 12,600 cu. yds. of stone. At the bid price of $1.50 per cu. yd., this item would cost $18,900.

Sodding.

The application drawings call for sodding the downstream face of the dam. This would cost at least 15c per sq. yd. It is estimated that 23,000 sq. yds., would be required at a cost of $3,450.

Additional Costs.

The contract drawings show that where the earth dam has a maximum section, the rolled core fill is to be taken to rock foundation. Also, at the east bank of the earth dam there are rock outcrops on the surface. It is essential that suitable cut-off be provided at the joint between the earth fill and the rock. This may involve

(235) the cleaning out of seams, excavation of rock and grouting of foundation. The extent of such work can be determined only after the foundation is uncovered, and I have therefore included no additional cost for this work.

I have also made no allowance for the extraordinary maintenance which is normally required during a number of years after the completion of an earth dam.

9-A) SPILLWAY CAPACITY.

The application gives the flood discharge record, at the dam site, as 72,000 c. f. s., in 1908. This is 65 c. f. s. per sq. mi. for the 1,100 square miles of drainage area at Buzzard Roost. The application also estimates the maximum flood, that may be anticipated, at 132,000 c. f. s., or 120 c. f. s., per sq. mi. This is equal to the 132,000 c. f. s., maximum discharge used by the U. S. Army Engineers for the spillway design at the Buzzards Roost site. During the July, 1916, flood, on the Catawba River, the maximum flood discharge at the Lookout Shoals Station, with a drainage area of 1,410 sq. mi., was computed at 181,000 c. f. s., or 125 c. f. s. per sq. mi. In my opinion, the maximum flood discharge of 132,000 c. f. s., as given in the application is certainly not an excessive estimate for design.

The contract drawings call for four Taintor gates, each 25 ft. high and 38 ft. wide. These gates would have a discharge capacity of 70,000 c. f. s. at normal reservoir level. For the maximum flood discharge estimated in the application, and with the four gates fully open, the reservoir level would have to rise 10 ft. above normal or to within 2 ft. of the top of the earth dam, before the discharge will equal the inflow. Considering wave action, this would endanger the safety of the earth dam. The contract drawings, however, call for an earth fuse plug, designed to break and wash out whenever the reservoir level would rise above the top of the earth plug, at El. 445. Should the fuse plug channel maintain its section, as shown on the drawings, the reservoir level for the maximum flood discharge would rise to about El. 447.0 at the spillway, and to about 448.0 at the earth dam, or to within about 4 ft. of its top. This is none too safe.

However, as called for on the contract drawings, the fuse plug channel is not confined on its sides nor is it

(236) carried to rock bottom. Should the earth plug blow out, it would let loose a wall of water 200 ft. wide and about 15 ft. deep. The tremendous energy of this discharge would excavate its own channel of unpredictable width and to hard rock. The contract drawings show several wash borings in the fuse plug area with a rock surface varying from 424 in the fuse plug channel to elevation 415 about 300 ft. away. There is nothing to indicate that this is solid rock. At the Lookout Shoals Station of the Duke Power Company on the Catawba River, the functioning of the fuse plug during the July, 1916, flood resulted in the excavation of two channels about 600 ft. and 200 ft. wide, and about 70 ft. deep below the top of the fuse plug. This practically drained the entire pond, which had a reservoir area of less than 2,000 acres, put the station out of commission for a considerable period of time and involved considerable expense of reconstruction to eliminate fuse plug action in the future. Even if the rock as shown on the contract drawings is solid rock, the functioning of the fuse plug would result in draining the upper 15 to 25 ft. of the Buzzard Roost reservoir, and in superimposing this tremendous volume of water, with its potential force of destruction, on properties downstream, and especially on the Lexington reservoir. The functioning of the fuse plug channel will also tear out a portion of the main highway between Greenwood and Newberry. Since no definite channel is provided for taking this water back into the river, the water will necessarily have to dig its own channel and may result in destruction of property not owned by the County.

I consider the fuse plug a thoroughly impractical solution for taking care of flood water. Two additional floodgates should be installed to permit controlled discharge of the maximum flood. With the six floodgate installations, the maximum flood discharge would be taken care of with a rise in reservoir level of about 4 ft. at the dam. This would give a reasonable margin of safety to take care of such operating contingencies as a gate being out of commission, or other than perfect operation of the floodgates. The lowering of the maximum high water level will also permit more economical revisions of the railroad and highway crossings. The revisions of these crossings as previously outlined are based on the installation of 6 floodgates.

(237) 9) EXCESS EXCAVATION, APPROACH CHANNEL AND TAILRACE.

a) Approach Channel.

As revised on the "general contract" drawings, the approach channel has a bottom width of 200 ft. with 1 to 1 side slopes. The spillway at the end of this channel is provided with four Taintor gates. When these gates are fully open and water at the normal reservoir level at El. 440.0, the maximum velocity in the canal would exceed 9 ft. per second. For the maximum assumed flood condition and with high water at El. 447.0 the velocity in the canal would be almost 11 ft. per second. These velocities are excessive. Even if the channel is excavated through a stiff clay, mean velocities in excess of about 5 ft. per second will result in erosion of the bottom and banks until sufficient area is excavated to reduce the velocity below the erosion limits.

Considering the elimination of the fuse plug channel, and the installation of 6 floodgates, the required total approach channel excavation would be at least 780,000 cu. yds. or about 147,000 cu. yds. in excess of the excavation specified in the contract for the approach channel and fuse plug channel. With this channel excavation the canal velocity would be 5 ft. per second for a discharge of 70,000 c. f. s. (corresponding to 4 gates open with headwater at El. 440). For 5 gate discharge, (87,500 c. f. s.) the canal velocity would exceed 6 ft. per second.

b) Tailrace.

The contract drawings and specifications call for tailrace excavation extending only about 350 ft. below the upstream face of the powerhouse. Downstream of this excavation only a pilot channel 25 ft. wide, about 8 ft. deep, and over a quarter of a mile long is called for to extend to the river. Here again the intention would seem to be to use water discharged from the spillway to complete the tailrace excavation necessary for satisfactory operation of the powerhouse. I believe this method is impractical, and in the long run will cost more than proper tailrace excavation, made in the dry, at the time of the construction of the plant. It is my

(238) opinion that the cross-sectional area of the tailrace should be equal to the cross-sectional area of the present river channel at the dam site. This would require at least 133,000 cu. yds. of excavation for this tailrace.

c) Total Excess Excavation.

The contract specifications do not include unit prices applicable to the excess earth excavation as outlined above for the approach and tailrace channels. At the unit cost of 20c per cu. yd. this item of additional excavation of 280,000 cu. yds. would cost $56,000.

10) ROCK EXCAVATION.

The contract specifications call for a total of 30,000 cu. yds. of rock excavation in the area of the powerhouse, spillway and adjoining channels. Based on the rock contours as shown on the contract drawings, and the typical sections shown for the powerhouse, spillway and abutments, the required rock excavation for the 4 flood gate layout will be at least 47,000 cu. yds. The churn drill and diamond drill data furnished by Greenwood County would seem to indicate that neither the spillway piers nor the cut-off walls, nor possibly the spillway proper as shown on the drawings, have been carried to satisfactory foundation, except possibly at the northern end of the spillway. The tremendous energy of the high velocity water jet, below the spillway, will erode any except the hardest rock, and will undermine the spillway foundation if same is not carried to solid rock. It will be necessary either to extend the foundation to solid rock or to extend a heavy concrete apron far enough downstream to safeguard the stability of the structure. It is difficult to determine accurately the additional rock excavation and the additional concrete that will be required for adequate structure foundations until the foundation is uncovered. The available rock data would indicate that considerable additional cost will be involved, but I have made no separate allowance for this additional cost.

For the six gate installation, as outlined above, the total rock excavation on the basis of the spillway design as shown on the contract drawings, would be 65,000 cu.

(239) yds. At the bid price of $3.25 per cu. yd., the cost of this item would be $211,250.

11) EARTH EXCAVATION FOR POWERHOUSE AND SPILLWAY.

The contract specifications call for 10,000 cu. yds. of earth excavation for the powerhouse, spillway and the portion of the tailrace extending 350 ft. downstream of the upstream face of the powerhouse. This quantity of earth excavation would seem to be seriously in error. Based on the original ground contours and typical sections of the structures, as shown on the contract drawings, the required earth excavation would be 36,700 cu. yds. for the 4 gate layout proposed by the County. For the 6 gate spillway, the total earth excavation would be 51,000 cu. yds. and at the bid price of 65c per cu. yd. would cost $33,150.

12) SPILLWAY CONCRETE.

As outlined above under the item of rock excavation, the churn drill and core drill data furnished by the County indicate that the spillway piers, cut-off walls, and possibly the spillway proper, would have to be carried to lower level than is indicated on the contract drawings, to secure adequate foundation. The drill boring data is insufficient to permit an accurate determination of the additional concrete which would be required, and I have therefore not increased the concrete quantities as called for in the specifications.

The contract specifications call for a total of 6,365 cu. yds. of concrete for the spillway, classified as follows:

50 Cu. Yds.—Class A.
4,365 Cu. Yds.—Class B.
1,950 Cu. Yds.—Class C.

While the total quantity is essentially correct, on the basis of the design as shown on the contract drawings, the classification is in error, in that the Class A concrete specified on Drawing No. P. S.-102 for "12 in. of surface" for the concrete spillway would amount to 410 cu. yds. even if limited only to the downstream wearing surface of the 4 gates.

(240.) For the 6 gate installation, and considering the same design for the two additional gateways as is shown on the contract drawings for the adjacent gateway, 2,865 cu. yds. of additional concrete would be required. At the mean bid price of $13.58 per cu. yd. the additional cost would be $38,907. The total of 9,230 cu. yds. of spillway concrete would cost $125,343.

The specifications call for 60,000 lbs. of reinforcing steel for the four gate layout. For the six gate installation, 100,000 lbs. would be required, and at the bid price of 45¢ per pound would cost $4,500.

13). POWERHOUSE BULKHEAD AND SUBSTRUCTURE.

As outlined above, in the discussion of the spillway concrete, the available churn and core drill data is insufficient to determine the adequacy of the foundation and the additional concrete that would be required to extend the bulkhead to suitable foundation.

14) POWERHOUSE SUPERSTRUCTURE.

The powerhouse superstructure is covered by Contract #4, on which a low bid of $29,000 has been submitted. This does not include lighting system.

15) HYDRAULIC EQUIPMENT.

The Hydraulic Turbines and Governor systems are covered by Contract #1. There will be, in addition, the cost of the services of the erection superintendent furnished by the turbine manufacturer at $25 per day. The services of this superintendent will be required for a period of at least 4 months and will cost $3,000. I have also included an allowance of 1% to cover miscellaneous costs not covered above, such as cost of acceptance tests, crane service, etc. The total cost of the hydraulic equipment, completely installed, would therefore be $181,000.

16) ELECTRICAL EQUIPMENT.

The water wheel generators, switch gear, and the apparatus, wiring and steel work required for the outdoor step-up station is covered under Contract #2. The cost

(241) of supervision of installation on the basis of $22 per day for services of erection superintendent, as specified in Contract #2, will be at least $2,000. I have also included 0.5% to cover other miscellaneous material and labor costs, such as cost of crane service, electric power, insurance, lubricating oil, etc. The total cost of the electrical equipment, completely installed, will be $343,900.

17) POWERHOUSE CRANE.

The powerhouse crane is covered in Contract #5 and for this the total cost is $7,100.

18) TAINTOR GATES AND HOISTS.

Four 25 ft. high x 38 ft. wide Taintor gates and hoists are called for in Contract #5, and the low bid price for this material, delivered f. o. b. Chappells, S. C., was $51,050. The bid price for erection, as covered in the general contract was $6,000. The services of the erection superintendent, at $15. per day will be at least $450. The above total cost of $57,500. for the 4 gates, does not include the cost of wiring to the hoist motors. On this same basis, the cost of equipment and erection for the 6 gate installation will be $86,250.

19) PENSTOCK GATES AND HOISTS.

In Contract #5 the low bid price was $14,300 for the material, f. o. b. Chappells, South Carolina. The low bid price for erection labor was $2,000. The services of erection superintendent at $25 per day specified by the bidder, will be at least $750. The total cost of the gate installation, not including wiring to the hoist motors, would be $17,050.

20) TRASH RACKS.

The low bid price on the trash rack material was $2,900, while the low bid price on erecting same was $1,500, giving a total cost for the trash racks of $4,400.

21) WALKWAY ON TOP OF SPILLWAY.

For the 6 gate installation, the cost will be $3,600.

(242) 22) WATER SUPPLY SYSTEM.

The low bid price for the water supply system external to the powerhouse was $4,000. This does not include the cost of wiring connection to the pumps.

23) STATION ELECTRIC SERVICE.

The general contract does not include the wiring for miscellaneous station service equipment, nor the powerhouse lighting system. The cost of these items will be not less than $2,400.

The County would have to build, at its expense, a construction substation to supply power to the several contractors. The cost of erection, operation, maintenance and dismantling of this substation, and of temporary lines to powerhouse and pump house would be not less than $400.

24) MISCELLANEOUS STRUCTURES, EQUIPMENT AND SUPPLIES.

Neither the application nor the contracts include provision for the following:

a) Operator's Cottages.

b) Machine shop, office, transportation and testing equipment.

c) Materials and supplies in stock required both for the power plant and for the transmission and distribution network.

All of this would be necessary for proper operation of the plant, transmission lines and distribution lines. I have included a minimum allowance of $24,000 for these items.

25) OVERHEADS.

a) Engineering.

Under the terms of the contract, dated July 21, 1934,

(243) between Greenwood County and Mr. D. T. Duncan, the cost of engineering will be not less than "six per cent (6%) of the total cost of the project, exclusive of legal, administrative, and engineering fees". This will amount to at least $211,537.

b) Legal and Administrative.

The application allowance of $55,000, for legal and administrative expense during construction will, in my opinion cover the cost, and I have accepted this figure.

c) Interest During Construction.

I have computed the interest during construction on the basis of an interest rate of 4% for 1/2 the construction period of 12 months, specified in the general contract, plus a 3 months' preliminary operation period. This was charged on the total cost of the construction, which I have determined, less grant, and amounts to $93,304.

26) CONTINGENCIES AND HAZARDS.

The general contract states that "the County accepts responsibility of flood waters overtopping the dam after it reaches an elevation of 420, provided: the Contractor has so arranged his schedule of operations to conform to all the above requirements and provides for the adequate protection of the earth fills." Other elements of additional cost which I have not included in the cost of the development because of lack of definite information on which I could base an accurate determination, include the following:

Additional rock excavation for spillway and power house, to suitable foundations.

Additional concrete for spillway and power house to suitable foundations.

Cut-off between earth fill and rock surfaces at bottom of core trench and at east bank.

Extraordinary maintenance of earth dam during a number of years after dam is completed.

(244) Revisions of county roads and bridges..

Revisions of Saluda River Bridge on S. C. Highway #10.

Extras: The general contract makes provision for such extra materials and such extra labor "as the engineer may authorize in writing".

Raising of Cothran Highway Bridge.

Drilling and grouting rock foundation. The general contract states that this work, if required, will be paid for as "extra work".

Omissions and unforeseen items.

Considering the hazardous nature of this type of construction work and the meagerness of essential foundation data a 10% contingency allowance would not be out of line. As a minimum, I have allowed $200,000, or about 5 % of the cost of the development, for this item.

27) TOTAL COST OF DEVELOPMENT.

There is attached herewith, Exhibit #1, which gives a summary of the cost of the development, as outlined above. The total cost of $4,085,451 is $1,318,451 in excess of the cost of $2,767,000 shown in the application submitted by Greenwood County. It is my opinion that this excess cost is the minimum necessary to secure reasonable safety of the structures and protection to property both upstream and downstream of this project.

F. H. C.

EXHIBIT #2.

BUZZARDS ROOST PROJECT

ANNUAL COSTS.

(Based on Grant of $682,000.)

1) Administration.

General Manager	$ 4,000
1 Bookkeeper	1,800
1 Assistant	1,200

(245) Legal	1,000	$ 8,000

2) Operation and Maintenance Labor.

1 Power Plant Superintendent	$ 2,000	
7 Operators	7,000	
1 Laborer	600	
Reservoir Mosquito Control	4,500	
1 Line Foreman	2,000	
3 Linemen	3,600	
Substation Operators (part time)	1,800	
Meter Reader and Repair Men (2 men)	3,000	$ 24,500

3) Operating Supplies, Maintenance Materials and Major Repairs.

Dam and Powerhouse	$ 5,000	
Reservoir Mosquito Control	3,000	
Transmission and distribution lines	4,500	
Substations	1,500	
Transportation Equipment	1,000	
Major repairs and Contingencies	3,000	$ 18,000

4) Office and Warehouse Expenses.

Office Rent, Warehouse & Storage yard rent, Telephone, Stationery, Postage, etc.	$ 1,500	$ 1,500

5) Insurance.

Employees Liability	$ 1,500	
Fire	300	
Public Liability	100	$ 1,900

6) Taxes.

Property outside of Greenwood County.

Reservoir lands—8,000 acres at 20¢	$ 1,600	
Structures, 42% x $1,502,618 x 47 mills	29,662	$ 31,262

7) Depreciation and Betterment Reserve $ 60,000

(246) 8) Interest and Capital Retirement.

5.78% of total cost less grant ($3,403,451 x 0.0578)	$ 196,719
TOTAL ANNUAL COST	$ 341,881

B.—ANNUAL COSTS.

1) OPERATION AND MAINTENANCE.

To properly operate and maintain the proposed Buzzards Roost Project together with the substations, transmission lines and distribution lines, so as to render reasonably dependable service will require an annual expenditure of at least $53,900, as follows: (For detailed set-up, see Exhibit #2.)

Administration	$ 8,000
Operation and Maintenance Labor	$24,500
Operating Supplies, Maintenance Materials and Major Repairs	$18,000
Office and Warehouse expenses	$1,500
Insurance	$1,900
TOTAL	$53,900

The above costs represent, in my opinion, the minimum annual expenditures for proper operation and maintenance.

2) TAXES.

The entire powerhouse, spillway, approach and tailrace channels, and a portion of the reservoir and transmission lines would be located outside the limits of Greenwood County. The property taxes on this portion of the property at the tax rates prevailing in Newberry and Laurens Counties, applied to 42% of the cost which I have determined for these properties, will be $31,262 per year. (See Exhibit #2.) It is my understanding that this project would not be subject to the following state and federal taxes and I have made no allowance for same:

(247) South Carolina K. W. H. Generation Tax.
South Carolina Gross Receipts—License Tax.
South Carolina Property—License—Tax.
South Carolina Railroad Commission Tax.
South Carolina State Income Tax.
Federal Income Tax.
Federal Capital Stock Tax.
Federal 3% Tax on Retail Sales.

3) DEPRECIATION AND BETTERMENT RESERVE.

To take care of the loss in value of the power plant and transmission and distribution system due to wear and tear, obsolescence or to other causes, and to permit replacement and improvement of plant and equipment, an annual sum should be set aside and a reserve created. The annual charge for these purposes, specified in a resolution of the Finance Board of Greenwood County, on the basis of their considerably lower estimate of cost of development, is $60,000. While a higher cost of development would require additional allowance for this reserve, I have not increased this amount.

4) INTEREST AND CAPITAL RETIREMENT.

Considering a maximum grant by the P. W. A. of $682,000 the net cost of the project to Greenwood County would be not less than $3,403,451. Considering that 4% bonds would be issued for this entire amount and that these will be retired in thirty years, the average annual cost, at the rate of 5.78% would be $196,719.

Should the grant be increased to $885,000 so as to equal 30% of the increased cost of the development (materials and labor), the annual charge for interest and capital retirement would be reduced by $11,745 per year.

5) TOTAL ANNUAL COST.

On the above bases the total annual cost including operation and maintenance, taxes, depreciation and betterment reserve, and capital charges would be $341,881, on the basis of the $682,000 grant.

(248) C.—POWER OUTPUT AND ANNUAL INCOME.

1) BASIS OF POWER OUTPUT STUDIES.

The Buzzards Roost Project as outlined in the application to the Federal Power Commission, will have no steam auxiliary and no interconnection with any other source of power. The available primary or firm power will therefore depend on the proper utilization of the reservoir storage. As explained below, there is a very limited market for secondary power in the Buzzards Roost territory and that at very low rates. It is therefore to the advantage of the project to develop the maximum practical amount of primary power, and my study of power output has been made on this basis.

2) PRIMARY POWER.

A detailed study, on a weekly basis, shows that the maximum amount of primary power that could be delivered on the basis of a 20 ft. drawdown is 28 million K. W. H. per year. It is important to note that in the absence of actual streamflow data during the dry year 1925, this study of primary power was based on the streamflow as estimated for this period by the U. S. Army Engineers, on the basis of the U. S. Weather Bureau daily gage height readings, and a rating curve established several years later by the U. S. G. S. It is also important to consider that while the year 1925 is the driest on record to date, there is no assurance that more severe droughts will not occur in the future. In my opinion a reasonable estimate of primary power would not exceed 25 million K. W. H. per year.

3) ANNUAL INCOME FROM PRIMARY POWER.

The application lists, as under contract for primary power, four cities, two oil mills, one glass plant and rural electrification. The "estimated yearly consumption" for these customers is given at 15,200,000 K. W. H. and the total income at $129,300. This would give an average rate for primary power of 8.5 mills per K. W. H.

Should the county sell the remaining available primary power to large industrial consumers, the aver-

(249) age rate per K. W. H. of estimated annual consumption would be about 7.5 mills. Should a portion of this power be sold to smaller cities, the average rate per K. W. H. to these customers would be about 8.5 mills per K. W. H. Even if it is considered that all the available remaining primary power will be sold at the average rate of 8.5 mills per K. W. H. the average annual income would be as follows:

Reasonable estimate of available primary power—25,000,000 K. W. H. @ 8.5 mills	$212,500
Maximum estimate of available primary power—28,000,000 K. W. H. @ 8.5 mills	$238,000

The above is based on the assumption that the county will be able to sell, during each and every year, 100% of all of its available primary power. This is impossible in a practical enterprise. The amount of power which will be taken by the industrial consumers will vary from year to year with the economic conditions. This is also true, though to a lesser extent, with the power demand of the cities whose prosperity depends on their industries. The average power that will be delivered during a period of years will be less than during the peak year of that period, while the power delivery during the peak must be less than the maximum capacity of the plant, otherwise no margin of safety would be available. Over a period of years, the average annual income from the sale of primary power will be less than the theoretical income computed on the basis of assumed sale of 100% of available primary power, during each and every year. In my opinion, the $212,500, as shown in the above table, is the maximum annual income that can reasonably be expected from the sale of primary power.

4) SECONDARY AND DUMP POWER.

Operating the 3 generating units at their full capacity of 15,000 K. W. during 80 hours per week will give a maximum weekly production of 1,200,000 K. W. H. of which 92% or 1,104,000 K. W. H. would be available for delivery. Deducting the primary power would give 559,000 K. W. H. as the maximum weekly secondary and dump power available for delivery, whenever there is

(250) sufficient streamflow to produce this power. A detailed study, on a weekly basis, for the 30 year period ending with 1933 shows that secondary and dump power would have been available as follows:

	Ten Year Period Ending With 1933	Thirty year Period Ending With 1933
Average Annual K. W. H. Secondary and dump power available for delivery	11,500,000	14,000,000
Average number of weeks per year that secondary and dump power would have been available—		
255,000 K. W. H. per week	27	34.7
559,000 K. W. H. per week	12.8	14.7

The above average annual K. W. H. of secondary and dump power would have been available for delivery only on the assumption that:

a) Whenever sufficient water was available all the three generating units would be in full operating condition. If any unit were off the line for repair or maintenance the amount of secondary and dump power would be reduced.

b) The periods of abundant streamflow would coincide, at all times, with the periods of maximum activity of the industries contracting for this secondary and dump power. At periods of less than maximum industrial activity, a portion of the secondary and dump power would be wasted over the spillway.

c) All of the secondary and dump power is of such a nature as to be commercially usable.

That this is not the case, can best be emphasized by the following schedule of secondary and dump power delivery which would have been necessary during 1933,

(251) the year which most nearly approaches the average for the above 30 year period:—

No. of Week beginning With January 1st	Schedule of delivery for secondary and dump power (100%=559,000 KWH per wk.)	% of Total Secondary and Dump on Line
10	Deliver— 100%	100%
1	Cut off— 20%	80%
1	Restore— 20%	100%
1	Cut off— 25%	75%
1	Cut off— 10% more	65%
1	Restore— 2%	67%
1	Restore— 33%	100%
1	Cut off— 35%	65%
1	Cut off— 9%	56%
1	Restore— 44%	100%
4	Cut off— 54%	46%
2	Cut off— 100%	0%
5	Restore— 46%	46%
5	Cut off— 100%	0%
1	Restore— 100%	100%
1	Cut off— 1%	99%
2	Cut off— 53% more	46%
13	Cut off— 100%	0%

This extreme lack of continuity would make a portion of this power commercially valueless. In my opinion, a reasonable estimate of the available secondary and dump power would not exceed 10 million K. W. H. per year.

5) ANNUAL INCOME FROM SECONDARY POWER

Secondary power, in the Buzzards Roost territory, can be sold only to cotton mills which have their own steam plants. A few of these steam plants are still of the old and inefficient type, which are being gradually eliminated or replaced with modern power plants. Most of the prospective secondary load listed in the application is now being furnished with power from steam plants of the modern type. The few mills depending on old and inefficient steam plants may be willing to pay the

(252) 5 mills per K.W.H. rate for secondary power which, the application claims, is the rate of the contract with the Grendel Cotton Mill. To be able to take this secondary power it will be necessary for these mills to maintain their old steam plants in shape to pick up the load whenever the secondary power is cut off. It is not reasonable to expect that these old steam plants will be kept in operation during the life of the Buzzards Roost Project.

The more modern cotton mill steam plant can produce power with a coal consumption of about 1.5 lbs. of coal per K.W.H. at a fuel cost of about 3.5 mills per K.W.H. It would not be in the interest of the mill with a modern steam plant to buy secondary and dump power unless it can save money doing so.

The application lists one contract for secondary power with the Grendel Mills at the rate of 5 mills per K.W.H., with an estimated annual consumption of 3,000,000 K.W.H. per year. The remaining secondary and dump power available is, as outlined above,

7,000,000 K.W.H. per year, considering a reasonable estimate of total secondary and dump power of 10,000,000 K.W.H. per year, and

11,000,000 KWH. per year, considering the maximum estimate of 14,000,000 K.W.H. per year.

It is my opinion that over a long period of years there will be no market for this secondary and dump power at the 5 mill rate, and that a reasonable estimate of the possible average annual income from the sale of the remaining secondary and dump power will not exceed the equivalent of 7,000,000 K.W.H. at 3.5 mills. On this basis, the income from the sale of secondary power would be:

3,000,000 K.W.H.	@ 5 mills	$15,000
7,000,000 K.W.H.	@ 3.5 "	24,500
	TOTAL	$39,500

(253) 6) TOTAL ANNUAL INCOME

The total annual income from the sale of both primary, secondary and dump power, as outlined above, will be as follows:

Primary Power	$212,500
Secondary & Dump Power	39,500
TOTAL	$252,000

This is the maximum average annual income that could reasonably be expected from this project over a

W. D. FAUCETTE, a witness for the plaintiffs, being first duly sworn, testified as follows:

I am chief engineer of the Seaboard Air Line Railroad and have been since January 1, 1913. I have practiced the profession of an engineer substantially since I left college which was 34 years ago, and my work during that period has been largely devoted to railroad engineering.

I am familiar with the track of the Seaboard where it crosses the Saluda River and Cane Creek above the proposed Buzzard Roost development. This line is our main line to Atlanta and Birmingham districts. The line through Greenwood is the main line of that part. These crossings are about nine miles from the proposed dam site. At the Saluda River crossing we have four concrete or masonry piers sustaining steel spans which are two hundred feet in length. On each side of these piers there are trestles. The trestle structure and bridge itself is approximately 1,000 feet of opening. On each side of the trestle structure there is an earth fill. At Crane Creek we have a wooden trestle a little in excess period of years.

of 200 feet in length and an earth fill.

I have made an investigation to determine in what manner the structures composing both the Saluda River and Cane Creek crossing would be affected by the construction of the Buzzard Roost project. The water will flow back on all the right-of-way and tracks in that val-

(254) ley and cover over the tracks at the Cane Creek location, and, we believe, it will rise above the rail for a distance along the tracks in excess of 3,000 feet. At the low spot of this crossing it will be something like 14 feet above the cross ties. At the Saluda River bridge, we believe, the high water breaking point would be over the present top of the rail.

As a basis for our study we have used an elevation of 440 at the dam site. We have made what we consider proper allowance for back water and also proper allowance for the flow and floods reaching a point of 445-½. If the water goes any higher back at the dam, of course, we would like to go back to that question. I think Mr. Duncan gave me the information in regard to elevations, and I sent Dr. W. C. Riddick for information and from that we got the data.

We have made a study as to what changes would be necessary in our road in order to make it safe for operation if this project should be built, and we have made an estimate of the cost of those changes. We have given rather careful thought to this matter. In considering what would be the proper and safe and adequate solution to protect the railroad track and its operations and the maintenance of it at these crossings, we did it entirely in an attitude that was neutral with respect to this power project. I might say that we have no opposition to the project as such. Our interest, solely, is one of protection to the railroad, the integrity of its property and the maintenance thereof. In seeking this solution we concluded that the safe, proper and sensible thing to do was to build a parallel line off the center line of the existing route across the valley, and to that end we ran the preliminary line across that valley to both sides of that crossing. Then we made an estimate of what we thought was the proper thing to do. That estimate included the treatment of Cane Creek valley, across the Saluda River, and the route from one end to the other. We made an estimate of that study and I would like to read it into the record. I might say that the total preliminary estimate, excluding interests and equipment charges, to cover the proposed Saluda River Valley crossing, which also includes Cane Creek, is $345,334.00. I would like to add just here, as a matter of information, that to the above must be added as a cost to the railway

(255) the additional maintenance required on that line over a period of years over normal maintenance. We have figured the embankment slopes as conservatively as we thought proper to figure them. We used the rate of 2-½ to 1. If further facts shows that a flatter slope is required, we feel that the same must be added. We realize that 3 to 1 is considered about the proper and normal thing to do but in order to be as conservative and as reasonable as we could, in the consideration of this study, we adopted in this study 2-½ to 1. The width of bridge openings we have taken at approximately 1,000 feet. If further studies require larger openings, such additions must be added to the preliminary figures. The adoption of 1,000 feet of opening is less than the sum total of the openings across the valley now by some two hundred feet. After reflection and consideration, I believe, that we could do that in the interest of conservatism and at the same time reasonably protect our traffic and railroad.

We could not safely operate our railroad if this water was impounded without incurring this expense. It is our opinion that the proper and prudent treatment of this situation makes it necessary to replace these wooden trestles with steel trestles. If wooden trestles were not replaced with steel, maintenance would be affected in that the trestles would be under water. We do not attempt, where we can avoid it, to perpetuate wood under water when you have a continuous high elevation of water. It is our conclusion that the proper engineering treatment of that situation is to put steel under the track over the water. The fills would be properly riprapped to protect them from erosion and to hold the bank in its slope integrity. The slopes of the fills would 2½ to 1. I have here a copy of the preliminary estimate which I have prepared. (The plaintiffs introduced in evidence as their Exhibit No. 25 preliminary estimate referred to by Mr. Faucette, a copy of which is hereto attached.)

(The plaintiffs introduced in evidence as their Exhibits Nos. 26 to 34 inclusive, a series of letters between Mr. Faucette and Mr. Duncan, copies of which letters are hereto attached.)

We had not made any survey when we submitted

(256) the estimates contained in my letter of November 17th to Mr. Duncan. That was simply a preliminary office estimate, simply answering a letter with the best information we had at the moment, without the best or local consideration of the matter. We subsequently maturely and thoroughly considered it which brought up the subsequent information we submitted. I have no knowledge or recollection of any contact between the district government engineer and my office in regard to the estimates referred to by Mr. Duncan in his letter, of February 12, to me. The figures given by Mr. Duncan are identical with the figures of the estimate appearing on page 147 of the Congressional report upon the Santee-Cooper Basin. I think it fair to say that the $265,000.00 referred to in their estimate on page 147 of Document No. 96, 73d Congress, in order to carry out the percentages, would be increased if you added the percentages which government engineers saw fit to add. They add several percentages—overhead 5%, contingencies 8%, engineering and supervision 7%, interest during construction 3%—which if added to this $265,000.00 would carry it in excess of $325,000.00. In the light of our study we arrived at the figure $345,334.00, without interest or without equipment charges, for the proper treatment of our situation.

My letter of January 22 to Mr. Duncan was written after we had reached the conclusion that the proper, safe, and correct way to solve the problem was to build a parallel line and based on the then studies we had it appeared to us that it would be in excess of $325,000.00. This would include the Cane Creek treatment plus the Saluda River treatment. In response to Mr. Duncan's request, in my letter of February 5, I gave him such additional details as I had at that time. We have been making estimates along since the first of the year, and we ran a preliminary line, I think, in March parallel with the present crossing, to see what we could do. That gave us the basis for our more recent figures which we compiled in the last two weeks.

We do not consider that, from the standpoint of operation and maintenance of the project and the responsibility of the service which we render, it is a practical matter to leave that railroad on the present line. We think the proper thing to do is to build in parallel a line

(257) not under traffic and then put the traffic on it. We have never considered even in an academic sense the possibility of treating the old line in its present location. After this matter was brought up by Mr. Duncan, and after more careful and mature consideration of the matter, we reached the definite opinion that the way to handle it, and the proper way to handle it, was to handle it along the lines we have suggested. We believe, however, that to build in parallel would cost probably about the same as endeavornig to treat the situation on the old line, if we consented to have it treated. We feel that the practical solution is to be build a parallel line. For the last month, I would say, we have averaged about 13 trains over this track in the 24 hour period. I think it fair to our property, however, to state that we are operating now at the very lowest density of traffic. If the density of traffic would get in any way normal, we expect that number to go up to possibly 20 or more trains in the 24 hour period. In talking of it at this time, we are talking about a very low point of traffic movement.

The map of the project area filed by the County with its application to the Federal Power Commission at the Seaboard crossing over Cane Creek reads as follows: "Proposed relocation of the railroads" and shows the proposed relocation by a dotted cross line from some point north of Cane Creek to some point south of Cane Creek.

CROSS EXAMINATION.

In November 1933 in response to Mr. Duncan's request for an estimate I wrote him the letter which is offered in evidence of November 17, 1933, I believe, and gave him an estimate for raising the crossing over the Saluda River proper 6.63 ft. of $60,100. Gave him an estimate for raising the track and fill 11.36 ft. of $81,700.

Subsequent to November 17, 1933, we engaged Dr. W. C. Riddick to make a report and we discussed the question of the scope and nature of the investigation. Mr. Duncan, as I recall, wrote me or came to my office and in the conversation or in Mr. Duncan's subsequent letters he referred to the fact that it appeared to him that he might have omitted the treatment of the Cane

(258) Creek crossing. Of course, I discussed that with my staff in the office at considerable length. We discussed in detail the effect of such a preliminary discussion and reached the immediate conclusion that we would have to go into this thing more maturely and more thoroughly. Colonel Johnson who I believe represented the Duke Power people, came to see me sometime after January 1, 1935. When Mr. Duncan said that he had omitted the question of the Cane Creek crossing from the problem, and in the reflection of the fact that we had this railroad and were responsible for it, and the thing began to unfold itself to me, that it was proper, in my duty, to go into the matter more thoroughly, I did do so and made the more detailed estimate which I gave Mr. Duncan. Realizing that we had a problem there, which if you were going to flood the entire valley, we could not treat lightly, and on our own initiative and acting under the responsibility with which we are charged, we undertook to make the investigation for our protection. I was not directed by any superior to get up these estimates. The estimates have not been approved by the Receivers of the Seaboard.

The names of the representatives of the Seaboard who are here today for this hearing are Mr. E. A. Frink, Engineer of Bridges; Judge W. P. Green of Abbeville, S. C., is our counsel; Mr. H. S. Thomas, Engineer of Construction; Mr. W. D. Simpson, Acct. Chief Engineer of Maintenance; and I think Mr. M. H. Gold, who is Superintendent of Operations, is here, and my secretary is here, just with me and Mr. H. Leard is here, just as an assistant to me—just to help me with my material and assist me. I believe the agent here in Greenville, Mr. Elliott, is in town.

It was determined by our Legal Department that I would be the witness. The Duke Power Company is not reimbursing us for what we paid Mr. Riddick for his examination. Not one cent, nor do we ask them or anyone to pay Dr. Riddick. They are not paying one cent of the expenses of this group of gentlemen of the Seaboard here.

The Seaboard has an interchange with the P. & N. at Pinoca and at Greenwood. The head of our Traffic Department is Chas. R. Capps, Chief Traffic Officer for the Federal Receivers.

W. D. FAUCETTE.

(259) Now as to my general knowledge of the condition of our railroad and our freight, would say, knowing Mr. Capps capability, that his estimates were approximately correct. As to my own knowledge, I have no knowledge.

The present grade on our fill now is between 1-¼ to 1 and 1-½ to 1. That is less expensive than 2-½ to 1 as there is less volume. We work to a standard of 1-½ to 1 on all fills without water. For normal material on normal slope conditions 1-½ to 1 is normal with dry material, but in water and sand conditions we take a flatter slope. In our estimate of $345,000.00 we have eliminated all wooden trestles.

I think the present bridge over the Saluda River was built some five or six years ago. We replaced the steel spans without removing the traffic, but it should be stated that you are on some substantial elevation which is an entirely different problem from every point of view. Replacements may be made without removing traffic but such work does interrupt traffic continually. It is a question of whether we can give the service required under our speed. As a competitor we have the strongest conditions to face and we must use every means to facilitate traffic. The structure which is contemplated in our estimate of $345,334.00 would not be a great deal better than the present structure.

I do not know what valuation is placed on this bridge by the Interstate Commerce Commission. (By agreement it was stipulated that the plaintiffs objected to all testimony in reference to valuation by the Interstate Commerce Commission.) I have no reason to doubt the accuracy of the paper which you hand me as a valuation by the Interstate Commerce Commission. It reads as follows: "Total reproduction cost, as shown in basic engineering report, of bridge over Saluda River on valuation date, June 30, 1918, with prices as of 1910-1914. Cost of reproduction, new, substructure—stone piers, $12,988.00; superstructure—steel, $12,534.00; timber trestle approaches, $13,378.00; engineering and general expenditures, $4,303.00. Less depreciation, $28,933.00." It shows a grand total, new, as of June 30, 1918, of $44,759.00. I would like to say in commenting that this is of 1918 which is 17 years ago. The conditions as of that date are not represented by this statement. As a matter of fact, I have protested the record of 1918 formally with

(260) the government. We do not accept as a fair measure of value the government's valuation and this is not a fair valuation as of this time. We do not recognize the depreciation in any event.

It would be more expensive to raise the bridge to a high water mark of 455 than to a mark of 440. It wouldn't be substantially more but it would be some more.

RE-DIRECT EXAMINATION.

I see no relation between the valuation of the Interstate Commerce Commission and the making of this change.

M. R. KIMBRELL, a witness for the plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

I have been employed by the Duke Power Company, or its predecessors, since 1909. Since 1913, I have been engaged in the design and in the preparation of all estimates on transmission lines and substations. I have made a study of the effect of the construction of the proposed Buzzard Roost project on our transmission line crossing the Saluda River, about four miles above the proposed dam. This transmission line is constructed of steel towers with two 100 K. V. circuits of 266,800 A.C. S.R. and one ground conductor. It has as its immediate terminals Newberry and Greenwood and is one of our main lines, being a part of the double circuit 100 K. V. loop extending from Newberry to Greenwood, Belton, Greenville, and Spartanburg and back to Newberry by way of Union and Whitmire. With the water level at the top of the proposed flood gates at Elev. 440 and not considering back water, a total of 17 of the steel towers will be submerged as follows:

3 Towers 10 to 15 feet
2 Towers 20 to 25 feet
4 Towers 30 to 35 feet
7 Towers 40 to 45 feet
1 Tower 46 feet.

(261) Any rise in water level due to flood conditions will, of course, increase the submergence in proportion. In my study of the solution of the problem presented by the submergence of this line by the proposed Buzzard Roost project, I have followed the standard practice of the company in connection with its own reservoir crossings and in connection with crossings of reservoirs of other companies; that policy being that to insure safe operation and proper maintenance of the transmission line and to insure uninterrupted service to its customers, it is necessary that towers be located so as to be normally accessible for inspection, maintenance and repair. I find that the most economical method of taking care of the situation presented by the proposed Buzzard Roost project is to relocate 3.1 miles of the present line, so as to permit crossing of reservoir at a narrow point about 3,000 feet above its present location. The length of the reservoir crossing will be approximately 6,300 feet, and will be made up of four spans of approximately 1,000, 2,700, 1,000, and 1,600 feet respectively. A total length of 2.2 miles of standard tower line construction would connect the reservoir crossing section with the existing transmission line. In making the estimate for the reservoir crossing section, I have assumed the same loading conditions as for the existing line and have determined the size of conductors and heights of towers so as to give the most economical overall cost of construction. Estimated cost for the necessary relocation of this line is as follows:

(a) Cost of high strength conductors (266,800 C. M. A. C. S. R. 10,000 # tension—special)	$4,100.
Cost of stringing conductors	1,500.
(b) Cost of insulators and fittings in place	3,700.
(c) Cost of tower footings in place: for 2 towers (85 yds. at $20.00 each)	3,400.
for 3 towers (50 yds. at $20.00 each)	3,000.

(262) (d) Cost of towers erected:

2 towers at 75,000#	150,000#		
3 towers at 35,000#	105,000#		
	255,000#	at 9.5¢	24,200.

(e) Erecting 2.2 miles of line	$3,100.	
Taking down 3.1 miles of line & returning to stock	4,300.	
Additional for 2 angle towers in place	500.	
Less credit for .9 mile of material	($7,900.) 3,700.	
	$4,200.	4,200.
Total		$44,100.

In addition to the above there will be all expenses for the necessary rights-of-way and clearing. In other words, the basis of the foregoing estimate is that I have charged the County with the complete cost of the 6,300 feet reservoir crossing section, this being a special type of construction; I have charged the County with the cost of taking down the 3.1 miles of existing line which will have to be taken down and with the cost of erecting the 2.2 miles standard tower line construction which will have to be erected at the new location and have credited the County with the material in the .9 mile of the present line which can be salvaged and restored to stock.

The Duke Power System has no towers in water anywhere. The Duke Power Company, when it rebuilt the Catawba dam, in order to prevent having any towers in water went to a similar expense as that which I have used in making my estimate of the cost of the relocating or changing the tower line which would be flooded out by the Buzzard Roost project. We have crossings over the reservoirs in other places that we constructed that way because that was the shortest and most economical. If water is put around steel towers in one of these reservoirs, the steel will rust much quicker than if it was in dirt. These steel towers at present are constructed of comparatively light steel. In the event of floods, if a

(263) tree or log hit one of the corner legs it would buckle and the tower would come down.

The plaintiffs introduced in evidence as their Exhibit No. 35 copy of Release No. 989 issued by the Federal Emergency Administrator of Public Works, dated September 27, 1934, which copy was furnished plaintiffs by the defendant, Harold L. Ickes, etc. in response to notice of plaintiffs to produce same, a copy of which said Release, marked plaintiffs' exhibit #35, is hereto attached.

Plaintiffs introduced in evidence as their Exhibit No. 36 copy of Circular No. 1 issued by the Federal Emergency Administrator of Public Works, dated July 31, 1933, entitled "The purposes, policies, functioning and organization of the Emergency Administration—the Rules prescribed by the President", which copy was furnished by defendant Ickes, and a copy of which said Circular, marked plaintiffs' exhibit #36, is hereto attached.

Plaintiffs introduced in evidence as their Exhibit No. 37 notice to the defendant, Harold L. Ickes, as Federal Emergency Administrator of Public Works, service of which was accepted by Henry T. Hunt, attorney for defendant Ickes, on June 6, 1935, in which defendant Ickes was notified to produce at the hearing "a copy of the comprehensive program of public works, as required by Section 202 of the National Industrial Recovery Act, to be prepared by the Secretary, if any such comprehensive program has been prepared". In response to said notice the defendant Ickes produced the papers which were introduced in evidence, marked plaintiffs' exhibit #38, copies of which papers, two in number, are hereto attached.

Plaintiffs introduced in evidence statement of the bonded indebtedness of Greenwood County showing said bonded indebtedness to be $1,686,500.00.

Plaintiffs introduced in evidence a statement of the value of the property in Greenwood County as assessed for taxation showing that the total assessed value of all taxable property in Greenwood County for the year 1934 was $9,093,603.00.

(264) Plaintiffs introduced in evidence as their Exhibit No. 41 copies of the power contracts which the defendant Greenwood County has made for the sale of power which would be produced by the Buzzard Roost project, said copies having been furnished plaintiffs by the defendants and being copies of all the contracts which the County has entered into for the sale of any power which would be produced by said project. A copy of which said contracts, marked plaintiffs' exhibit #41, are hereto attached.

STATEMENT OF EVIDENCE.

PART II

EVIDENCE FOR THE DEFENDANTS

J. W. BARNWELL, a witness for the defendants, being first duly sworn, testified as follows:

Direct Examination.

I am bridge engineer for the South Carolina Highway Department. After my graduation from Clemson College in 1913, and Massachusetts Institute of Technology in 1915, I worked with Dupont and after some army service went to the Highway Department of South Carolina in 1917.

I am familiar with the Cothran Memorial Bridge on Highway No. 7 over the Saluda River, having supervised its design and construction. The Highway Department has not checked any of the backwater curves or any of the engineering data to determine the effect of the Buzzard Roost project upon this bridge. We are relying on Mr. Duncan's figures as checked by the Army Engineers and the other Federal authorities.

Mr. W. S. O'B. Robinson: The plaintiffs move to strike out "as checked by the Army Engineers and the other Federal authorities." Taken subject to objection.

Using his figures it is our understanding that the water will be 3 ft. under our lowest steel. If a flood higher than the 1908 flood came it would come up to our

(265) bridge and probably over it and damage it if there were no Buzzard Roost development. We feel that with the dam there we will not have any more damage than if it wasn't there. We are making no objection to the construction of the Buzzard Roost project as planned by Mr. Duncan and the other engineers. We are doing this: We are depending on the Government authorities. We don't think it is our business. We cannot go into all the figures for the dam.

Q. Mr. Barnwell, state whether or not you have had any experience with the railroads, their underpasses, or otherwise, as to raising the railroads? A. Yes, sir, we have some plans here. We raised the Southern Railroad 7 ft. in a very much similar condition as you have here on the river. Now the bridge was 438 ft. long. We raised it 7 ft. at a cost of $14,000.

Mr. W. S. O'B. Robinson: We object to the testimony as to the Southern Railway bridge at some other place. Taken subject to objection.

Q. I will ask you whether or not this was satisfactory to the Southern after it was completed?

Mr. W. S. O'B. Robinson: Objection to the question, which applies to the entire answer.

Taken subject to objection.

A. The Southern Railroad made the plans, we checked them, and the Southern Railroad did the work —the Southern and the Highway Department did the work.

Q. When that Southern Railroad bridge was being raised, I will ask you whether or not traffic continued over the bridge?

Mr. W. S. O'B. Robinson: Objection.

Taken subject to objection.

A. Yes, sir, traffic continued over the bridge.

I have made an estimate for the raising of the Seaboard and C. & W. C. bridges in what I consider would be a reasonable and economical manner. My estimate on the C. & W. C. amounts to about $34,000 and on the

(266) Seaboard $33,000.00. These estimates contemplate raising the Seaboard six feet and the C. & W. C. five feet. I made no estimate for the bridge at Cane Creek. The estimate for the C. & W. C. includes replacing of the piles not now creosoted, jacking up the bridge and putting it on what we call pony bents, and replacing about half the bracing that is there now. The estimate for the Seaboard includes the same thing except it does not include any piles but it does include replacing most of the bracing. Raising the bridges as I suggest would cause the railroad to slow their trains up for the time the work was being done.

CROSS EXAMINATION.

I examined the C. & W. C. bridge last Tuesday. I imagine I spent not over a couple of hours in making that examination. Upon the basis of this examination I prepared my estimate of $34,000.00 between that time and this. I just made the estimate based on raising the bridge five feet and do not know what clearance that would give. My estimate contemplates raising the masonry piers five feet. It does not include any reinforcing below the addition. My estimate contemplates merely the substitution of treated material for the untreated material in the trestles and then the construction of what is called pony bents upon the top of the xisting trestle. That would give what you might call a two-story bent. My estimate contemplates leaving the fill at each end of the trestle just as they are.

I examined the Seaboard bridge last Tuesday and prepared my estimate between that time and now. This estimate contemplates the addition of six feet to the masonry piers. There would be no change in the piers below this addition. I do not know what clearance this raise of six feet would give. My estimate contemplates merely the placing of pony bents on top of the existing trestles. It does not include any element of cost for changes in the earth fills of the approaches to the trestle.

I, myself, have made no estimate or calculation of the water elevations under the Cothran Memorial Bridge under the various water conditions which would be created by the Buzzard Roost dam. The slopes on the fills at each end of the bridge are 1-½ on 1. The water would stand more or less constantly against these fills if the

(267) dam were built. This might necessitate flattening the surface of those fills and riprapping them. Of course, they have been there a good while.

D. T. DUNCAN, a witness for the defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

My residence is Greenwood, S. C., and my education and experience is as follows: Graduate of Clemson College and Cornell University in Civil Engineering. Commenced the practice of engineering in 1920 and since that time have been engaged in construction work as an engineer with the following approximate years spent in different kinds of work: Highways—5 years; Railroads—2 years; Buildings—8 years; Hydro-electric—7 years. My railroad experience consists of double track construction on the A. C. L. Railroad. My principal hydro-electric experience consists of 4 years with the Lexington Water Power Company as assistant resident engineer in charge of construction of dam and clearing reservoir area and other connected engineering work.

Am Engineer in Charge of the Buzzard Roost Project. I commenced work on the Buzzard Roost Project about 2 years ago (August 1933) for Greenwood County. A declaration of intention was filed at this time with the Federal Power Commission. The original application was filed with PWA on November 16, 1933, requesting a loan and grant of $2,627,197.00. This estimate included transmission lines in Greenwood County only. Before the allotment was made at Washington on July 19, 1934, it was found desirable to serve consumers in other Counties and transmission lines were extended into Newberry and Laurens Counties with the understanding with the people in these Counties that their County would share in all profits in proportion to the amount of current consumed in each County.

This arrangement meeting with PWA approval, an allotment was made amounting to $2,767,000.00 as shown in the application for license to the Federal Power Commission dated Sept. 8, 1934.

The Federal Power Commission requested certain changes in the application for license together with some

(268) additional data. The data was submitted and on November 2, 1934, the Power Commission approved the plans and issued a license to Greenwood County to construct the Buzzard Roost Project.

The Duke Power Company entered a protest with PWA against the project and a hearing before the PWA Power Board of Review was held in Washington on July 2, 1934. After considerable delay PWA increased the allotment to $2,852,000. The Duke Power Company then entered protest with the Federal Power Commission, but at the last moment and after occasioning considerable delay and work on our part it was withdrawn and a suit commenced in Federal District Court which has been delaying the commencement of construction work for some time. These delays have, of course, occasioned quite an amount of extra cost and expense. My total estimate of the cost of the project, offered in evidence, amounts to $2,852,000. It includs a contingent fund of $292,429.21.

In the engineering, I have had three principal associates, namely, Mr. F. R. Sweeny, consulting engineer, Mr. G. R. Barksdale, electrical engineer, and Mr. J. G. Wardlaw, Jr., hydraulic and construction engineer. The original plans proposed the construction of an earth dam across the river with power house at the toe of the dam and intake towers and penstocks through the dam. The spillway was located on the east side of the river—largely as shown or described in House Doc. No. 96, 73rd Cong., 1st Sess., the Report of the War Department on the Santee River, N. C. and S. C. I have that report.

After approval of the project by P. W. A., drillings were commenced to gain further information concerning the rock foundations and to make a final layout of structures. These drillings were made with wash boring outfits and well drill machines. A rock ledge was located in a valley about one thousand feet below the dam which proved to be a most economical location. Before deciding upon this location a dam site about a quarter of a mile upstream was studied, but was finally abandoned on account of a slightly longer dam and several inches loss of head. Those drillings have been completed and they were composed of three types of drillings. The first was wash borings which we made over the area all around. I don't know exactly how many there were, but quite a number.

D. T. DUNCAN.

(269) The next item is acquisition of land, 12,566 acres at $17.50 per acre, $219,905.00. We have had the land under option at different times and have been held up on it some times; and we had six months' options and they expired, and we had them renewed, and so forth, but we have had about 85% of this land under option at one time or another. It would average about $15.75. In my opinion the land, the 12,566 acres, can be bought for $219,905.00, the amount of the estimate. This land is land that most of it is subject to overflow, or a large portion of it. There is very little cultivated land at this time. There is not a single house in the whole area that I know of. The actual area below our 440 line is approximately 12,000 acres. In my opinion, it will be unnecessary to buy 40% more land than is actually below the 440 line. I was employed by the Lexington Water Power Company for a number of years during the construction of that project, and they found it more economical to buy land outside of the area, and from the evidence I heard it seems to be the practice on other dams, which I do not doubt as so. Quite a number of people around Greenwood want lake front property on this lake, and they don't want that line in front of their house. The majority, in fact everyone I have talked to recently, much prefer to have us just buy up to the water's edge. We pay for the land to the water's edge, and give the property owner the right to enter on the lake at any time he wants to—fishing and hunting rights. In lieu of that we retain the right to be released from any damage that might come to his property by wave action, silting, or any damages that might accrue. Also, he gives us the right to keep clear the land around the edge as required by the State Health Department.

Mr. W. S. O'B. Robinson: Plaintiffs object to the statement as to the terms of the deeds under which the land would be acquired, or has been acquired, as that is a matter of record and the deeds themselves are the best evidence. Taken subject to objection.

In view of that preference by the present owners of that land, I have arrived at an estimate of 12,566 acres. In my opinion, that is ample acreage for our development. When we first started off to investigating the cost of the land, we found that there was a forestry pro-

(270) ject on the other side of Greenwood County that came almost up to this project. So we checked into what land was costing over in this area, and I found they were going to pay about $5.00 an acre. On the other side the land in this basin is not quite as good as the land that the Forestry Department proposed to buy, because it is subject to overflow and is hilly along the river. The land's value was probably about $5.00 an acre. That is what I would think it was worth, but to keep down friction it was decided to pay $15.00 an acre, or around that figure.

The next item is Number 3, transmission right-of-way—102 miles at $300.00, $30,600.00. In my opinion, the estimate of $30,600.00—$300.00 per mile—is a fair estimate for it.

Item Number 4 is clearing reservoir area—600 acres at $30.00, $180,000.00. The total reservoir area is approximately 13,000 acres. We propose to clear 10 feet below our drawing. The other area in the middle will be a small area—I don't recall the exact acres now, but probably 1500 or maybe 2,000 acres in this area in woods, and we are going to leave that there until the water comes up. There is a bunch of pulpwood men who want to take all the pulpwood out of there, and all the high trees we plan to trim off at a later date; top off the trees in this area and float them out. We got the Army Engineers' plans that show the area to be cleared. In other words, it shows the wooded area on these maps, and we actually measured off the area that they showed to be cleared. From that data and our own surveys we arrived at the conclusion that there was 6,000 acres to be cleared, which included the 25-foot strip above the water. I arrived at the figure of $30.00 an acre from former experience. I was in charge of the clearing at Lake Murray for some time, and they had a set price for clearing there of $17.50 an acre. They had a fixed price that they didn't change that I know of to the contractor. He was given $1.00 extra if he finished up and wound up the contract within a certain time. $18.50 an acre, yes, sir, and that was sufficient to induce all of them to finish up on time and receive their bonus. Lake Murray had more heavy oak trees. Up in this area the majority of the trees are second-growth pines. That is, this area has been abandoned on account of the increasing floods, due to the change in the river flow, coming up over these

(271) valleys occasionally that ruined the crops—little short floods. The timber in this area is easier to clear. In arriving at my $30.00 estimate, I have taken into consideration the wage scales required by our loan and grant agreement. In my opinion, the sum of $180,000.00 is ample to clear the necessary land and reservoir.

Item 5 is the general contract. Bids have been received on this contract. This contract includes all—$622,190.22—this contract includes all the work of building the dam, moving of the dirt, and in fact all of the actual work on the ground.

The sixth item is hydraulic turbines (bids received) low bidder—$168,327.50.

Number 7 is electrical generators, substation, etc. (bids received) low bidder—$324,544.00.

Number 8 is gates, racks, crane, etc. (bids received) low bidder—$74,350.00.

Item 10 is main transmission lines, 102 miles at $3,040. per mile—$310,000.00. Those transmission lines form a loop line that runs from the power plant to Newberry and goes over near Clinton, Laurens and back to Greenwood, with a line also running from the power plant across to Goldville. That transmission line can be built for the $310,000.00. The mileage of 102 miles is sufficient for the necessary transmission lines.

Item 11 is substations—$161,817.00. In my opinion, these six substations can be built for that figure.

Item 12 is re-routing Duke Power Company 100,000 volt transmission line, 2 miles—$26,185.00. That estimate was made up by Mr. Barksdale, and approved by me. In my opinion, it can be re-routed for that figure.

Item 14 is telephone connection to power house from Greenwood exchange—$2,000.00. The Greenwood Telephone Company gave us this estimate of cost. That will give us adequate telephone facilities.

Item 15 is raising the Seaboard Air Line Railroad over the Saluda River—$29,430.36. Turning to the drawing that relates to the crossing of the Seaboard over the Saluda River I arrived at my estimate of $29,430.36 by making a survey of it and estimated it by making drawings and cross section of the fills, and so forth. This estimate provides for raising that bridge 5.6 feet. That is the raise of the bridge itself—the main span—and it ramps off at each end on a 1% grade. With the raise

(272) of that Seaboard bridge of 5.6 feet, it gives the low steel on the bridge at our elevation 440 a clearance of 4.8 feet. Our normal water would come to 2 feet up on the steel at the present time. If we raised it five feet, six inches, the clearance would be 3 feet, six inches, or 3.6 feet; 3.6 is the correct clearance. We propose to jack the bridge up, raise the concrete piers, and to raise the trestle on a grade up to the steel bridge, starting with the bridge and coming down to get your 1% grade. The Seaboard's Chief Engineer in November, 1933, estimated a figure of $60,100.00 for a raise of 6.36 feet.

Item 16 is relocating the S. A. L. R. R. over Cane Creek—$45,128.30. We propose to build a new creosoted timber ballance deck trestle on a new location. This bridge over Cane Creek is lower than the main Saluda River bridge. The water comes over it—I have forgotten exactly the depth—probably 10 feet, so it was found more economical to relocate the track for a mile, regrade it, and eliminate the grade that was in it, give it a flatter grade than before, the alinement was practically the same, and we will build a new creosoted trestle to take the place of the one they had there of considerable age. Our estimate of $45,128.30 is sufficient for that purpose.

Item 17 is raising the C. & W. C. Railroad over Saluda River—$34,196.10. We propose to raise that bridge 4.8 feet. At 440 it gives a clearance of 4.57 feet. Mr. Willoughby's estimate on the C. & W. C. bridge is $21,870.00 for a 4.1 raise; for 9.1, $80,930.00. If we have to raise either one of these railroad bridges over the Saluda River any additional amount, it will cost about $3,000.00 a foot.

Item 18 is rip rap on fills at Cothran's bridge on Highway No. 7—$1600.00.

Item 19 is raising bridge on Highway No. 10 over Reedy River—$9,241.25. I would like to explain about this bridge. It is on Reedy River about a mile, I guess, from the main Saluda River, where Reedy River runs into Saluda River. When there is high water on Saluda River, it backs over this bridge on Reedy River. In other words, it is a low-water bridge that is inundated by every flood of any consequence with back water from the river. It is a very old bridge, the trestles are untreated piles, and a lot of the stringers, which can be

(273) seen from the pictures, are in bad condition. It is on the State Highway system, and if we raise it we will feel that the Highway Department will bear some of the cost. It is an old-type bridge and should be raised by them, in my opinion. I found that they are going to have to raise it higher than it is now when they rebuild it. If they raise it higher it will most probably be high enough to clear our water, which will relieve us of any cost on it. At any rate we should be reimbursed for any money we spend on a better structure than they have now.

Item 24 is engineering—$154,001.89, and was arrived at on the basis of 6% of construction and land.

Item 25 is legal and administration—$55,000.

Item 26 is interest during construction—$75,000.

Item 29 is contingencies—$292,429.21. That is to take up any over-runs in any other items that might occur in bids, any incidental expenses you cannot think of, or haven't provided for in advance.

My estimate today is that the project can be completed for $292,000.00 less than the allotment. We made little changes as we went along, and our preliminary estimate gradually works into a final estimate. The County Engineer's estimate to the Federal Power Commission on the items for which bids have been received amounted to $1,251,022.00, and the contractors' bid amounted to $1,188,411.72, a saving of $62,610.28. The first item in our estimate of annual operation and fixed charges, (Defendants' Exhibit No. 24) debt service, is merely a mathematical calculation based on the amount of the loan, $2,170,000.00, at 4%, amortized over 25 years. I didn't allow any taxes on account of the fact that it is a county-owned plant, and at any rate I don't think they would run over $5,000.00. There was some question raised that some of the school districts would be left without funds if they were not paying the school tax, so that maybe they will have to pay a little bit. At the present time I do not estimate that we will have to pay any property taxes.

I think the primary power developed will run a little over 30 million K.W.H. We have calculated it under different drawdown conditions, different periods, and different ways, and it runs from 30 to 34 millions. We have used 30 million K.W.H. primary power in this

(274) table. We only estimate 11 million K.W.H. secondary power. That is a very conservative estimate. There are different ways you can figure it, but most of them would run higher than that. In arriving at the amount of power available, we had the data supplied by the Army Engineers in the 308 Report, the Santee River Report, and other information besides that. The Army Engineers' Report shows the drainage area, rainfall, and river flow. Those are the items, with the plans and specifications of the dam, used in making up my estimate. We have additional information from the United States Geological Survey's station at Chappells. I made the first calculations as to available power. These last figures were made by Mr. Sweeny and Mr. Wardlaw. Primary power at 8.5 mills will yield an income of $255,000.00 a year. Secondary power at 5 mills will yield an income of $55,000.00. A total of $310,000.00 a year. The first year, gross revenue—$310,000.00; operating cost—$47,600.00; insurance—$3,000.00. That gives you a net revenue of $259,400.00. After paying the service on the loan, principal and interest, that gives us a surplus that first year of $122,600. At the 12th year our accumulated surplus should pay up the loan.

In one of the resolutions of the Board a depreciation fund of $60,000 is set up for depreciation and contingencies. I didn't allow for any depreciation in this table, because I found out that it is not required by the P. W. A. to have any depreciation where your project is retiring itself in the period of the loan. They allow you to use your borrowing power again. After a loan is retired you can do that, and take care of it at that time.

Mr. Haynsworth: We object to that because that should be shown by some record. Taken subject to objection.

CROSS EXAMINATION.

In my estimate of the cost of the project as given in my direct examination I have left off any item for rural electrification.

I never designed a dam completely before. I have experience in constructing railroad bridges and trestles but not in designing them. I have never constructed one across a reservoir, but have constructed them across

(275) rivers, swamps and water like that. I have never been charged with the responsibility of maintaining a railroad bridge across a reservoir over which railroad traffic was moved, and I am not familiar with the schedule of construction and maintenance that railroads have in connection with wooden trestles over waterways, but I should think they ought to be inspected at intervals. With the Buzzard Roost reservoir completed and the water raised from 25 to 30 ft. high on the railroad trestles above the dam a large portion of the longitudinal and transverse bracing with the bolt connections would be submerged and ordinarily not accessible for inspection and maintenance. There would be long periods when the reservoir drawdown would be only a few feet. It would be difficult and expensive to replace any portion of these wooden trestles and any braces under the conditions of submergence which would be brought about by the Buzzard Roost reservoir. I have made no careful engineering analysis of the design of the present piers of the railroad bridges for the purpose of determining whether it would be necessary to strengthen the piers if the bridges were raised. The higher level of the track would impose a higher stress on the piers.

In my plans of changing these railroad bridges I show a 2 to 1 slope of the fills on each side. We used a 2 to 1 slope on another highway bridge across a reservoir which has been very successful and they have never had any trouble with it. That was a highway bridge, and the traffic over a railroad bridge is very different from the traffic over a highway bridge, traffic over a railroad moving in much larger and heavier units. Heaviness of traffic has no effect on slope of fill. On the dam we use a 3 to 1 slope on the upstream side where the water will be against the dam. The maximum height of the fill on the Seaboard bridge which I would construct would be 40 feet. These railroad fills would be saturated by water on both sides while the dam would have water only on one side. My plans of the proposed change in the railroad fills show rip-rap extending one ft. above normal water level and extending only 10 ft. below normal water level. The maximum drawdown of the reservoir is 20 ft. I have not calculated the reach of the open water against the railroad fills or estimated the height of the waves. The estimate of the cost of

(276) these railroad changes included in my estimate of the total cost of the project is not a finished estimate.

In the County's plan for relocating the Seaboard Air Line Railway over Cane Creek the span above the creek would be 60 ft. in length, and under the County's proposal this span would not be a steel span but creosoted timber. You could not put in a 60 ft. wood span. It would have to be steel. The County's estimate of cost to relocate this bridge over Cane Creek does not include the cost of this steel, but the estimate is sufficient to put a 60 ft. steel span in if we wanted to because the dirt price is a little high and so is rock. I do not know what a 60 ft. steel span would cost. No 60 ft. span was intended at Cane Creek. In our estimate we did not consider steel for this span but the estimate was based on a creosoted timber bridge out and out. The County's plan contemplates relocating the Seaboard over Cane Creek for a distance of approximately a mile.

The County has not actually purchased any land for this development. I think it owns some land in there that was taken in for taxes. I don't know how much, but some,—a considerable amount. I have allowed 12,000 acres for the reservoir below 440. I do not recall the acreage allowed for the 25 ft. strip above 440, but the total acreage computed for the reservoir is 12,556 acres. We haven't been able to buy the land for the powerhouse site, and will probably have to condemn it. The only price we have been able to get the owner to name so far was $50,000, and we have a condemnation suit pending against the owner. We also have another condemnation suit pending. When water of the reservoir reaches the height of 445 I think the land covered would be about 13,200 acres. Quite a number of streams, creeks and other tributaries would enter the reservoir. Where streams enter a reservoir that causes sand to deposit at the mouth of the stream and it is customary and usual for property owners up the stream to make claims on account of the stream filling up and their bottom land becoming soggy. Frequent claims have been made on that account. At other hydro-electric plants in this same territory streams entering the reservoirs have filled up and there have been claims for property damage by property owners on such streams.

Referring to the clearing of the reservoir the County

(277) proposes to clear down to elevation 410, and then leave the trees standing temporarily. I have no item for clearing below 410 in my estimate of cost. The acreage below elevation 410 is about 4400 acres, but I would say that approximately 700 acres of this is in the river channel. It is our plan to give away or dispose of all the merchantable timber in this area below 410. We propose to leave the other trees and raise the water on them, and then later on go in and cut off the tops of these trees and flood them out, or if it should be decided to be more economical to cut these trees and tie them down with wires as we did on Lake Murray. I have not included anything in my estimate for cutting the trees and taking them out of the water after it is raised, but we hope to get most of them taken out for pulp wood and the like. In clearing the reservoir we propose to pay PWA labor rates of 40c an hour for common labor. The clearing at Lake Murray, to which I referred on my direct examination, was done with common labor at 20c or 25c per hour. I referred in my direct examination to the clearing of Lake Murray, saying in my direct examination that I arrived at my figure of $30.00 an acre for clearing the Buzzard Roost reservoir from my former experience from being in charge of the clearing at Lake Murray, and that the cost of clearing there was $18.50 an acre. I was in charge of the clearing at Lake Murray which was done by contract, which constituted about one-fourth of the clearing. I am not familiar with the cost of clearing at Lake Murray. The records of all the cost were turned into Mr. Costello, the Treasurer of the Company, and he kept the accounts. I didn't intend to leave the impression by my direct examination that the average cost for clearing at Lake Murray was $18.50 per acre. That was the direct cost of the clearing done by contract not considering overhead and other things. I think more than 50% of the clearing at Lake Murray was by contract, but I don't know.

Direct Examination.

By D. W. Robinson, Esq.:

In a steam plant the percentage of capital is small, and the percentage of the cost of operation is large. If

(278) a steam plant is idle, it is not as serious a problem as if a hydro plant is idle.

I am a member of the South Carolina Rural Electrification Authority.

We have a little better than 20% spillway capacity in excess of Lake Murray. Lake Murray is 2400 square miles, and Buzzard Roost 1100, approximately. The largest flood on the Saluda River as far as the records of the Government show was 63,000 cubic feet per second in 1908. Records have been kept since 1905. At 440 our spillway could carry more than 63,000 second-feet.

RE-CROSS EXAMINATION.

My estimate of the maximum discharge at Buzzard Roost during the August 1908 flood is not 62,000 sec. ft. The estimate of the U. S. Geological Survey is 72,000 sec. ft.

Lake Murray covers 57,000 acres but the Buzzard Roost lake will cover only approximately 12,000 acres.

G. R. BARKSDALE, a witness for the defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

I am an electrical engineer and graduated at Clemson College in 1906. Two years ago I received my E. E. Degree at Princeton College. After finishing at Clemson, for five years, I was at the General Electric Works at Pittsfield, Mass. and served time on tests, and then was in the Engineering Department, designing small transformers. About 1912 I was transferred to the Schenectady works of the General Electric Company. About 1925 I had charge of the Electric Light and Water Works plant at Lebanon, Tenn., under a one year contract. Upon the termination of this contract, I was with the Electric Power Company for about five years as distribution engineer. My work was to have charge of the electrical engineering in all the towns except Nashville and Chattanooga, with approximately 310 towns and communities. During the depression I was dropped,

(279) along with a great many other engineers, out of the organization. Since then I have been at Greenwood, South Carolina.

The Southern Bell Telephone Company line from Greenwood to Cross Hill will be partially flooded by the Buzzard Roost reservoir. Approximately one mile of this line will have to be rerouted. The Southern Bell Telephone Company, in their letter of May 20, 1935, to Mr. Duncan, estimates that the cost of this expense will be about $6,000.00. That is the figure I used in the estimate.

Item 2—Duke 100 K. V. line. Mr. Duncan gave me a profile showing two possible routes that could be used in rerouting that portion of the Duke Power Company's 100 K. V. line that will be partially flooded by the water in the basin of the proposed Buzzard Roost Hydro Project. In order to obtain a fair estimate of the cost of rerouting this line, I turned the profile over to the Graybar Electric Company, Atlanta, Georgia, who had assured me that they could obtain the information from their connections who were reliable. The Graybar Electric Company received and forwarded to me tower drawings and profiles from Riter-Conley Company, Pittsburgh, Pa., and the American Bridge Company, Pittsburgh, Pa. From the information received from these companies the Graybar Electric Company submitted an estimate as follows:

Mr. Haynsworth: Now we object to that as being hearsay.

Taken subject to objection.

A. Route No. 1—12 towers—$26,185.21; Route No. 2—15 towers—$25,834.13.

Q. Now, Mr. Barksdale, from your knowledge and experience as an electrical engineer, in your opinion can this re-routing of this line be built on the 12-tower plan for $26,185.21? A. I do not know. I have never designed or built any 110,000 volt lines.

Q. Are these companies who have submitted these estimates reliable companies? A. I do not know, but I assume that they enjoy a very good reputation.

(280) After making a study of the transmission problem with the data available, I recommended that a 44 K. V. loop line be constructed from the Hydro-Plant to Newberry, to Laurens, to Greenwood to the Hydro Plant. I also recommended that a tie line be built from the Hydro Plant to a point near Goldville. A tie line at this point would enable the serving of large loads at any of the towns to be served on the loop with good regulation as we proposed to install induction voltage regulators at all substations. In order to maintain two-way service it would be necessary to keep the loop closed. If the loop is closed it becomes necessary to install suitable oil switches in the 44 K. V. line with automatic control by means of directional relays. Therefore, I recommended that this automatic oil switch equipment be installed. The cost of the transmission lines as described was estimated at $3,040.00, plus $300.00 per mile for right-of-way. 102 miles 44 K. V. lines at $3,040.00—$310,000.00. This does not include the right-of-way, whic his carried in another item, which would really bring the total cost of the line of about $340,600.00. In my opinion, without a doubt, this transmission line can be built for these figures. This will give a satisfactory transmission line which will be long enough.

In order to provide telephone communication from Hydro Plant to the various substations, we propose to have the Home Telephone Company provide a double circuit from the Hydro Plant to their Cross Hill exchange. The operator at the Hydro Plant will be able to dial the Greenwood Exchange. From the Greenwood Exchange we can reach any substation over the Bell Telephone Company's system or the system of the Greenwood Telephone Company. The Home Telephone Company will make the connection and guarantee good service for an initial charge of $2,000.00. Of course, all telephones installed and toll charges will carry the prevailing rates. This estimate is covered by their letter of May 18th, 1935.

The estimate upon the cost of substations was made under my direction. This estimate is $161,817.00 and those substations, in my opinion, can be built for that figure.

CROSS EXAMINATION.

(281) In laying out the substations as I have planned them I undertook to provide only for the customers listed by the County in its application to the Federal Power Commission as customers with whom contracts had been signed, except the Farmers Oil Mill which is to be served off the 2400 bus of the Newberry substation. I also made provision for the City of Clinton and the cotton mill at Ninety-Six, which customers are listed by the County n its application to the Federal Power Commission as prospective. I have made no provision for the other customers listed as prospective.

All my estimates of transformer capacity are only tentative and are subject to revision. That is one reason I have made no attempt to draw specifications and advertise for bids. It is necessary to find out who the customers are and what kind of load or demand they require in order to provide transformer capacity which will give them good service.

The County's estimate of the annual sales to the customers with whom they have contracts is 15,900.000 K. W. H. I am not prepared to say how many additional substations and what additional substation capacity would be required if 30,000,000 K. W. H. per year were sold from this plant. When they give me the customers I must insist that they put in a certain capacity to take care of them. Assuming that the County's estimate of the power that would be produced at this plant is 30,000,000 K. W. H. primary and 11,000,000 K. W. H. secondary, I do not undertake to say that I have enough substation capacity in my present layout to provide for the sale of that amount of power.

In connection with the substations I have planned, I have provided for only one spare transformer which is an extra 100 K. V. A. for the 44,000 volt substation supplying the rural district. I am not sure but I think there is a smaller one to step up the City of Ninety-Six.

I have not worked out the K. V. A. capacity of the substations which I have provided in my layout.

(282) F. R. SWEENY, a witness for the defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

I am a consulting engineer. I finished at Clemson College in 1906. After that I went with the old Southern Power Company for a short length of time and then was connected with Clemson College on the engineering faculty. In 1909-1913, I completed my work in engineering studies at the Rensselaer Polytechnic Institute at Troy, New York. After that I went into the employ of the Foundation Company in New York and Pittsburgh. In 1919 I came South and went into the engineering business. Since that time I have been in that business at Anderson, S. C.

I have been connected with the Buzzards Roost project since its beginning and have carefully followed the work through to the present time.

FUSE PLUG AND HEAD RACE CANAL:

It is my opinion that the layout as shown on the plans represents a sound and satisfactory design involving no serious hazards.

DAM:

The dam, in my judgment, is reasonably designed in general and detail. I can see no consequential defects in the provisions for drainage at toe or in rip-rap protection.

EXCAVATION AT POWER HOUSE AND SPILLWAY:

The calculations for excavation at power house and spillway were made by others connected with the project, but were followed by me and I have confidence in the results.

FOUNDATIONS:

The foundation conditions at power house and spill-

(283) way have been carefully checked by me and I am satisfied that all reasonable conditions are satisfied in our design.

SPILLWAY:

Rather exhaustive investigations have been conducted in regard to spillway capacity as well as its relation to past rainfall intensities and consequent floods. These investigations have been carefully examined by me and I concur in the conclusions as reflected in the present spillway capacity and fuse plug provisions.

POWER PRODUCTION:

The matter of power production was very thoroughly studied by me over a period of several months. After careful consideration of the conditions involved I find that we may reasonably expect the plant to develop for sale 33,000,000 K. W. H. prime and 11,000,000 K. W. H. secondary power annually.

I have heard all of the testimony of the witnesses for the Duke Power Company. None of it has shaken my opinion on any of these matters.

Q. Do you know the plan of the low bidders on the dam for building the dam if awarded the contract? A. I understood from a conversation with them that they intend to use trucks.

Mr. W. S. O'B. Robinson: We object to the statement of what he understood from a conversation. Taken subject to objection.

If they use trucks in building the dam the effect will be to practically make the entire dam a rolled dam.

CROSS EXAMINATION.

I have never designed a hydro-electric plant the size of the Buzzard Roost plant. I have never been in charge of the construction of a plant of that magnitude. I have designed one or two small hydro-electric plants, one was for the Capps Manufacturing Comapny. The plant was for only a few horsepower. It was started by others

(284) and I completed the penstock line. The dam was built when I went there and the power house was started. It was completed under my supervision. Another was a 100 horse-power plant at Walhalla for the D. A. R. School at Tamassee. I was called in because of the failure of the plant at Highlands to deliver its capacity and I made certain changes which resulted in it giving its complete capacity.

I have never operated a hydro-electric system such as this one. I tentatively aproved the original layout for this project. It was my opinion that the project as then laid out, with the assumptions made at that time, was sound from an engineering point of view. Since then the project has been changed and the dam moved across the river.

I have never designed an earth dam as large as the one for the Buzzard Roost project. I designed one or two small ones. One was for the Carey Lake above Pickens, which is just a pleasure lake. I have designed none comparable to this dam. I have never designed a fuse plug. I have never designed a railroad bridge over a reservoir. I have never out and out designed any railroad bridges. I have had something to do with the engineering of railroad bridges when with the Foundation Company. One particularly was for the Beaver River bridge on the Pennsylvania lines west just outside of Pittsburgh, and various other railroad structures, particularly in foundation features. I have never been responsible for the design of the structures. I have never been responsible for the maintenance of a railroad bridge.

I have never made an estimate of the power output of any hydro-electric project, comparable to this Buzzard Roost project, which was in fact constructed. The problems are all identical though regardless of magnitude. I have studied estimates of the power output for projects such as this.

RE-DIRECT EXAMINATION.

If the power projects above Buzzard Roost on the Saluda River are developed the primary power output at Buzzard Roost will be increased, depending, of course, on the size of the reservoir and the storage capacity.

(285) J. G. WARDLAW, a witness for the defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By D. W. Robinson, Esq.:

I am a graduate of The Citadel and University of North Carolina, with B.S. and M.S. Degrees in civil engineering. I have been in the practice of civil engineering for ten years, most of which time was spent in hydro-electrical work, including five years on the Drehr Shoals Dam. I am now employed by the D. T. Duncan Engineering Company. I have been engaged with Mr. Duncan in connection with Buzazrd Roost. I have checked and computed all of the quantities in the estimate, Defendants' Exhibit No. 7, and bid sheets, with the exception of those items dealing with electrical engineering and hydraulic equipment. In checking and computing these estimtaes (D. Ex. No. 7) I find these items are correct and sufficient, to the best of my knowledge. Those include all the items except the electrical and hydraulic.

I made a study of the power output from the Buzzard Roost project from river flow records shown in the Army Engineers' Report, and find that over this 29-year period the Buzzard Roost project can turn out 32,000,000 K. W. H. primary, and 12,000,000 K. W. H. secondary power.

I have also checked Mr. Duncan's calculations as to operation expense and believe that they are correct.

CROSS EXAMINATION.

My estimate of earth excavation is 10,000 cu. yds. I do not have the cross section showing my computation of that estimate. It is purely my estimate.

I used the 1931 drought period for my primary power studies. However, I studied the 1925 drought period which is a very low period and has occurred only once in the records. The figure of power output would require a little more than a 200 foot draw down to maintain this power through the drought period of 1925.

(286) However, I think it unreasonable to base the power output on a period that has occurred only once in history. The copies of the power contracts which Greenwood County has made for the sale of power from this plant, which you hand me, marked plaintiffs' exhibit No. 41, contains this language: "The power plant will furnish energy as agreed upon continuosly so far as reasonable, diligent, and modern equipment will permit, and agrees not to contract to sell primary power in excess of the primary power which would be available under similar stream flow conditions as prevailed during the dry period of 1925 and 1926, as indicated by government records from the stream gaging station at Chappells, from the proposed power plant as contemplated or may be enlarged." This is the first time I ever saw this provision. I would like to say that my former statement said that this power output could be maintained over the 1925 drought period but with an increased draw down. In my primary power studies, I have used a draw down of 20 feet for all periods with the exception of the 1925 drought period. The plans for the project show a normal maximum draw down of 15 feet and an extreme draw down of 20 feet.

RE-DIRECT EXAMINATION.

The railroad bridge of creosoted timber across a body of water which might well be called a lake and is a mouth of a tributary of the St. Johns River in Florida, is the railroad bridge I have in mind. The water is about two hundred feet wide there and quite deep. The A. C. L. Railroad has a bridge across this tributary, and it is all creosoted timber, with approach fills on each side.

The effect of the development of the proposed reservoirs on the Saluda River above the Buzzard Roost project, if they are developed, will, of course, increase the primary power of the Buzzard Roost project considerable.

I used the stream flow data at Chappells reduced 15% to take care of adjustment in drainage area. It is my personal view, however, that the reduction should be nearer 5%.

(287) F. H. H. CALHOUN, a witness for the defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By D. W. Robinson, Esq.:

My home is at Clemson College. I am head of the Department of Geology. I got both of my degrees, B.S. and Ph.D., at the University of Chicago. I was on the Geological Survey for four years.

CROSS EXAMINATION.

At the time I made my report upon the geology conditions connected with the Buzzard Roost project, the record of the borings at the dam site and spillway site were not available to me. So far as the drill itself is concerned, if none of the core is recovered you get no information from the drilling. The sample of quartzite (quartz schist) introduced in evidence was taken from core drilling No. 5 which is located under the lower edge of the power house. This sample came from the bottom 15 feet of this hole. This quartz schist is a very satisfactory material for foundations, but the power house foundation is not subject to as severe conditions as the spillway, especially at the toe of the spillway.

As an engineering geologist I would not recommend the construction of a spillway unless you had durable rock at the toe of the spillway. Hole No. 3 of the core drillings is located on the lower side of the spillway at the toe of the spillway. In this hole massive quartzite was recovered at elevation 364. The foundation under the major part of the spillway is at elevation 400. In this hole No. 3, out of a total depth of 52 feet of mica schist, above the quartzite found at elevation 364, less than 5 feet of core was recovered.

RE-DIRECT EXAMINATION.

The presence of mica schist at the point where I found it indicates that the same type of mica schist is present at the core borings. If you get that you would certainly get that same rock as you go down the core.

As a geologist, after examining the location itself, after seeing this record of core drillings, and samples

(288) from the core drillings, in my opinion, the foundations at the point of the toe of the spillway are satisfactory. In my opinion, the foundations at the point of the powerhouse are satisfactory.

In my examination of the location and in my examination of the core drilling, in connection with the geology of the foundations, I found nothing to indicate that there was anything dangerous from a geological standpoint.

RE-CROSS EXAMINATION.

The sample which has been introduced in evidence is the only sample from the six core drillings which I have examined. If actual core drillings and recoveries from the core drillings conflict with surface indications, the core drillings are more reliable, but you have to take into consideration the kind of rock you are going through. If in a certain area the geology is very uniform, you can be pretty sure what you are going to have under ground from surface indications. Mica schist is a very friable rock although it may be very hard rock and in going through like this you are likely to crush it.

Usually in the case of most dams, when the faundation is uncovered and excavated, conditions are found which were not anticipated and could not have been anticipated from a surface examination. You never can be absolutely sure how satisfactory the foundation is going to be before the actual excavation is made. You have got to, as you go along, develop your engineering technic to conditions.

A. C. BRUCE, witness for the defendants, testified as follows:

DIRECT EXAMINATION.

I am appearing here at the joint request of Greenwood County and the Public Works Administration. I graduated from the U. S. Naval Academy in 1922 and was commissioned an ensign in the Navy. I resigned in the fall of 1922 to take a job with Hugh L. Cooper & Company. I was in the New York office for a year on detail

(289) design and model testing for Wilson Dam draft tubes. I spent three years at Wilson Dam as inspector for H. L. Cooper & Company, covering all phases of the construction from drilling and testing the foundations to the final installation and testing of the turbines. After the completion of Wilson Dam, I took a job with the Arundel Corporation as Resident Engineer on the relocation of 16 miles of the C. N. & P. D. R. R. in connection with the Conowingo Dam. This work included the construction of three railroad bridges, three tunnels, and various other items such as the jacking and raising of over one mile of track under heavy traffic conditions. From there I went to the Saluda Dam as Resident Engineer for the Arundel Corporation for three years during the entire construction of the project. After that I spent eight months on the Safe Harbor Dam, which the Arundel Corporation was constructing at the time. In addition to the duties of resident engineer, I also had charge of the cost accounting on both the Conowingo and Saluda jobs. I started with the Federal Power Commission in September, 1933. My main work there has been economic studies and reports on the hydro-electric projects. This work included studies of the power and market available, the estimated cost, the design, stability and safety of the structures, estimates and comparisons with the cost of the steam electric energy and economical analysis of the projects. A large part of these studies and reports have been in connection with P. W. A. power project applications, which have been referred to the Federal Power Commission for investigation, report and recommendation. I have also prepared reports on license aplications and examinations as to the ligitimate investment in licensed projects.

The Greenwood County project was first referred to me when the County filed a "declaration of intention" to construct the project in December, 1933. After investigation the Commission found that the interests of interstate and foreign commerce would be affected by the proposed construction and therefore the County could not proceed until obtaining a license from the Commission. Later in December, 1933 the PWA referred the application for a loan to the Power Commission for investigation, report and recommendation. I made a study of the project, the power and market available, the

(290) cost, and the comparative cost of steam electric power, and found it to be economically reasible and self-liquidating. In accordance with my recommendation the Commission recommended to the Public Works Administration that the loan be made. In February, 1934 the County filed an incomplete application for license with the Commission and revised and completed the application, in September, 1934. At this time the question of the design, stability and safety of the structures was investigated and checked by the Engineering Division of the Federal Power Commission and found to be satisfactory. The license application together with the plans, maps and other data were refered to the Chief of Engineers, War Department, and the design, stability and safety of the structures were found to be satisfactory by his department. I believe the Secretary of War and the Chief of Engineers signed and approved the drawings in October, 1934. The Commission issed a license in November, 1934. The Commission, in accordance with the license issued to the County and through its field representative, the Division Engineer, War Department, located at Norfolk, Va., will have control over the construction of the project. Since coming down here for this hearing, I have again carefully examined the bids and estimates of the County Engineers and find them to be sound. I believe the project can and will be constructed for less than the estimated cost of $2,852,000. I make this statement after careful consideration of the testimony and estimates offered by the Duke Power Company's witnesses. With regard to the annual costs as estimated by the County, they appear to be very conservative. The operation and maintenance costs and the insurance are approximately equal to the similar cost as set up by the witnesses of the plaintiff. By comparison with the operation and maintenance costs of various operating companies, which I have examined, these costs as set up by the County are very conservative.

As regards the power available, the 30,000,000 K. W. H. primary and 11,000,000 K. W. H. secondary are conservative estimates of the power that will be available for sale to the prospective customers of the County.

Should the County have to pay taxes to the extent of $5,000 and set aside a total amount for depreciation

(291) and contingent funds of $20,000, the net annual surplus of $120,000 as set up by the County would be reduced to $95,000. Without doubt the project is self-liquidating, economically feasible and engineeringly sound.

(Plaintiffs object to the parts of Mr. Bruce's statement which referred to estimates, conclusions, etc., of other engineers; also to the part of his statement which expresses an opinion or conclusion as to the testimony offered in the case by the witnesses of plaintiffs.

Taken subject to objection.)

At the time the application for the Public Works loan to Greenwood County was presented, I made a study of the cost of power to the proposed consumers of the County under the existing rates from information furnished by the applicant and by the South Carolina Railroad Commission. At that time I believe the average rate of the power companies was approximately 13 mills to the proposed customers of the County, However, the rates have been reduced since then to some extent. The information furnished by the South Carolina Railroad Commission consisted of the schedule of the Duke and Southern Power Company rates.

In connection with the Piedmont Municipal Development in the Piedmont section of North Carolina, the proposed project of a 60,000 K. W. H. steam plant, there was approximately a hunderd textile mills in that territory of that project. At that time, in making that study I used the Duke rates effective September 1, 1934, in North and South Carolina as submitted to the rate survey of the Federal Power Commission, which also coincided with the rates that the applicant stated in the application. In this study I found that the average rate to those textile mills was approximately 11½ mills. The high rate—the maximum rate on the schedule—was 12¼ mills. The low rate was 9-2/10 mills. That was for the larger consumers in that territory which the Piedmont Municipal Development proposed to sell.

CROSS EXAMINATION.

The first hydro-elecric work on which I was em-

(292) ployed was with Hugh L. Cooper & Company in 1922. I worked in the drafting room on designs for the Wilson dam. I have never had a position where I had the responsible charge of the design of a hydro-electric power development, and have never been directly in charge of the construction of such a development. After leaving Hugh L. Cooper & Company I was resident engineer for the Arundel Corporation in the relocation of 16 miles of railroad where we had to build crossings over a reservoir. In building these crossings we did not use any wooden trestles at all but used concrete culverts. The railroad we relocated was a branch of the Pennsylvania Railroad and the engineers of the railroad designed and inspected the crossings.

I went with the Federal Power Commission in 1933. The original application of Greenwood County to the PWA for a loan was referred to the Commission. The original project would have been confined to Greenwood County alone. We went into the economics of the development and made a study of it and I think the plans at that time were not in sufficient detail to approve as plans. However, we did make a finding and a statement to PWA that the project was economically sound and feasible. I have no copy of the report we made to the PWA. The statement in my direct examination that the PWA referred the application for a loan to the Power Commission and that in accordance with my recommendation the Power Commission recommended to PWA that the loan be made has reference to the orignal application of Greenwood County for a project which would be confined to Greenwood County alone. I do not remember on which side of the river the power house was to be located according to the plans which accompanied this application, but I do know that it has since been moved to another location entirely. Since the original application was filed the entire layout of the project has been substantially changed. Later on the County filed an application with the Power Commission for a license, and I stated on direct examination that the design, stability and safety of the structures were investigated and checked by the engineering division of the Power Commission and found to be satisfactory. This was done by myself and by Mr. Harry Smith, Assistant

A. C. BRUCE.

(293) Chief Engineer of the Power Commission. I have no copy of the report which I made on the structures.

In my direct examination I stated that the license application and plans of the County were referred to the Chief of Engineers of the War Department, and the design, stability and safety of the structures were found to be satisfactory by his Department. I have not with me a copy of the letter of the Chief of Engineers. According to the plans which were submitted to the Chief of Engineers the fuse plug was located on the Laurens side adjacent to the spillway, and it has since been moved to an entirely new location.

The original location was not faulty but the new one is better. A large part of the data used by us in approving the original application was data outside that in the application.

Figuring 1-2/10 pounds of coal per kilowatt hour of power, at the present price of coal ($5.00 per ton) would make a kilowatt hour generated in a modern steam plant cost three mills. I have had no experience in designing steam plants for the production of power and have never operated a steam plant.

I don't remember whether the Chief of Engineers in his letter to the Power Commission disapproved of the use of a fuse plug and recommended that sufficient gates be substituted and that a competent hydraulic engineer with experience along this line be employed to study the project in this respect before final approval. I don't remember his words or any statement exactly to that effect. I do remember that he did say that he thought there ought to be more gates at that time. However, he later approved the drawing as shown. (Plaintiffs duly objected to the statement that the Chief of Engineers later approved the drawing as shown).

I have made studies of projects similar to the Buzzard Roost project, but I have never designed one that has been contructed and have never been responsible for the design of such a project. I think the land can be acquired for the estimated figure. I have never been charged with the responsibility of maintaining a railroad bridge over a reservoir. I have never operated a hydro-electric plant and have never had the responsibility of marketing the power of such a plant.

I have never known the PWA to approve a loan and

(294) grant unless the rates of the applicant would be lower than those of private utilities with which the applicant would compete. The rates must be lower than the Power Company rates, because otherwise they would not be economical. The rates of Duke Power Company to textile mills, to which rates I referred on my direct examination, are the rates contained in the Power Company's Schedule 1-A. These rates start at 12¼ mills and run down to 7¾ mills.

I stated on my direct examination that I thought this Buzzard Roost project should set up a depreciation allowance not exceeding $20,000 a year. I have not had any operating experience with plants of this kind or with transmission lines and substations such as this plant would have, on which to base my opinion as to this depreciation allowance.

RE-DIRECT EXAMINATION.

The changes which the County has made since the original application have improved the project. In addition to the revenue which the County would obtain from the sale of primary and secondary power they should obtain some revenue from the Lexington Water Power Company under the provision in the Federal Power Commission's license that a power project shall pay something for the benefit it obtains from headwater development. The calculation of the amount of this revenue is intricate and I am not prepared to say how much it would be.

CLARENCE E. ROSE, witness for the defendants, testified as follows:

DIRECT EXAMINATION.

I have degrees in both Electrical and Mechanical Engineering from Cornell University as well as LL.D. degree. The first fifteen years of my professional experience was with Ford, Beacon and Davis, Engineers, Inc., of 30 Broad Street, New York City, then I served as a Private Consultant for six years, and thereafter three

(295) years with the Studebaker Interests, at Chicago. The last two years I have been an Engineer-Examiner in the Engineering Division and was later assigned to the Electric Power Board of PWA in Washington. The testimony which I present represents the consensus of opinion of the Engineering Division of PWA at Washington, D. C., and not mine only.

(In view of that statement, plaintiffs object to the testimony of the witness in so far as it purports to represent the views of any one other than himself.

Taken subject to objection.)

Clearing—We arrived at our conclusions after carefully checking the three counties involved with the United States Forest Service and the United States Geological Survey, and in particular with their foresters and engineers who had made surveys in this section of South Carolina, and believe that 8,000 acres of land can be cleard at $20.00 an acre as an average, which yields $160,000.00.

Hydraulic—turbines, scroll cases, governors, electric generators, exciters, switch gear and step-up transformers were estimated by PWA to cost $571,580. This estimate was substantiated by actual bids which totaled $520,020 delivered and erected. This last figure is $51,560 less than our estimate and $213,551 less than the estimate of the Duke Power Company sent to President Roosevelt.

Transmission line loop as specified by PWA will be supported by 50′ galvanized steel towers. The South Carolina State Rural Electrification Authority has undertaken to develop the Rural Electrification formerly considered by this project. Therefore we have eliminated it herefrom. If the Rural Electrification Authority does not assume this portion of the cost of this project, ample funds are provided herein therefor.

Unit Costs: The following unit costs were used for PWA:

(a) Earth excavation $0.99 per cubic yard.

(296) (b) Rock excavation 434 per cubic yard.

(c) Concrete weighted average value of classes A, B, & C concrete 13.25 per cubic yard.

(d) Reinforcing steel, placed 4.7c per pound.

(e) Cost of purchasing station building 40c cubic foot.

Bids have been received for the construction of the dam, pen-stock, surge tank, spillway and power station building, etc., the lowest of which was $622,190, whereas PWA's estimate was $790,960, and the Duke Power Company's first estimate was $932,034, and its second estimate of $1,082,031 as sent to PWA.

The Safety of the Dam has been checked and approved by the PWA and the Engineer Corps of the United States Army.

We estimate that this project can be constructed at a cost of $2,513,575, which leaves $338,755 for any possible contingencies. Revenue, Operation Expense, Maintenance and Net Income PWA estimates annual sale as follows, with 10′ draw-down:

Firm electrical enregy sales:	Per Year
To municipalities, 10,800,000 KWH at 8.2 m./KWH	$ 88,670
To industrial customers 18,198,00 KWH at 6.5 m./KWH	118,290
Secondary electrical energy 15,000,000 KWH at 5 m./KWH	75,000
Total estimated revenue, first year	$281,960

Operation and Maintenance: (Office)		Per Year
One manager	$4,000	
One bookkeeper and stenographer	1,200	
Office supplies	720	
Telephone, telegrams and postage	900	
Rent and heat	1,200	
Misc.	600	
		$8,620

(297) Hydro Electric Generating Station:

One Supt.	$3,600	
Three engineers	3,600	
One helper	900	
Maintenance	12,000	
Misc.	5,500	
		25,600
Transmisison Line:		
One line foreman	$1,800	
Two linemen	3,260	
Two groundmen	2,540	
One meter reader and tester	1,500	
Supplies	3,100	
Maintenance	4,000	16,200
Total		$50,420
Fixed Charges:		
Debt service per year for 25 years	$138,000	
Insurance	2,900	
Taxes	3,240	
		$144,140

Recapitulation:

Revenue		$281,960
Operating expense and maintenance	$50,420	
Fixed charges	144,140	194,560
Net Income first year		$ 87,400

The Public Works Administration does not require a reserve to be set up for depreciation except when local statutes require this to be done.

In South Carolina we find this to be the case, and we therefore deduct from the above estimated net income as follows:

Net income for first year	$87,400
Annual Depreciation	20,000
Balance to surplus account	$67,400

It is reasonable to add thereto an estimated incremental increase, annually, of 1%/year. This would yield

(298) for the 25 years loan interval a mean balance to surplus per year of $76,240. Since protests have been presented we have re-studied this project, and are fully convinced that it is both technically and economically sound and we recommend it more strongly than ever.

I have carefully examined the electric rate schedule of the Duke Power Company, and find only Block Meter Schedules except Schedule #10, which is applicable only to resale customers. Block meter rates for large industrial customers are 30 years behind in modern electric rate theory. Again the Duke Power Company has spent thousands of dollars, is now spending more thousands of dollars, and stands ready to expend still more thousands of dollars todefeat this project. Therefore it is at once apparent that the Duke Power Company recognizes a great deal of merit in the project.

This statement represents the consensus of opinion of the Engineering Division of the PWA and it also represents my personal views entirely.

I made the calculations which I have given in evidence on the basis of a 10 ft. draw-down. If a 20 ft. draw-down is used it will give you more firm power and more secondary power.

Since I have been here I have had the PWA confirm what I have said with regard to depreciation. This confirmation was by two telegrams to me from Mr. McDonough, Director of Engineering.

(The plaintiffs objected to the introduction of these telegrams. Admitted subject to objection).

First telegram, dated June 14, 1935, read as follows:

Re your telegram, June thirteen Docket Thirty Nine Seventy Two you are correct PWA never requires borrowers to set up any deficiency funds unless such are required by local statute and then insists such deficiency funds to be kept to minimum STOP This attitude based on opinion it is unnecessary to accumulate deficiency funds as when a project is completely expended borrower may again use its credit to borrow for rehabilitation or replacement STOP Approval of this particular project did not contemplate setting up deficiency fund".

(299) The second telegram, dated June 15, 1935, reads as follows:

"Clarification of telegrams of June fourteenth STOP Should read PWA never requires borrower to set up any depreciation funds unless such are required by local statute and then insists that such depreciation funds be kept at a minimum STOP This attitude based on opinion it is unnecessary to accumulate depreciation funds as when a project is completely worn out borrower may again use its credit to borrow for rehabilitation or replacement".

In making my calculation of the estimated revenues I took into consideration the figure for head water development which the Lexington Water Power Company may have to pay Buzzard Roost. I went over to the F. P. C. and discussed it with Mr. McWhorter, and he stated that there certainly would be a payment required. I discussed the amount, and he said that would have to be determined after the project was built—to determine the additional firm power which the Lexington Water Power Company could put out after this project was completed.

It storage basins for power developments are built above Buzzard Roost on the Saluda River, for instance at Upper Ware Shoals, the effect on the production of power at Buzzard Roost when these projects are built would be to tend to smooth out the water curve, and would benefit the project, and would increase the firm power.

My details of my estimated cost bring the total up to $2,852,330 approximately, with $356,375 contingencies.

(The details of this estimate appear in the cross examination of this witness at page 174).

P.W.A. has sold $83,000,000.00 in bonds which have yielded above par a premium of $4,000,000.00 up to May 1, 1935.

CROSS EXAMINATION.

I stated on direct examination that I have carefully examined the electric rate schedule of the Duke Power Company and find only block meter schedules, and that such rates for large industrial customers are 30 years

(300) behind the times. That is the consensus of the PWA opinion of the Duke rates. It represent the consensus of the PWA opinion as to the Duke rates, but I dictated that opinion. The PWA considers the character of the Duke rates essential and material to this case. They are so considered for this reason: You take Schedule No. 1 and apply that to a hypothetical load the Duke Company had around here last week of 25 Kilowatts maximum demand, and that will yield 9 mills. If you apply Duke Schedule 1-A, which has certain discounts that the other schedule doesn't have, that will yield 8-6/10 mills, and if you apply Duke Schedule 10 it will yield 9-6/10 mills. The Duke Company will be the only competitor of the Buzzard Roost project, so we estimated a rate schedule for the project which would yield 6.5 mills for the industrial consumers of good load capacity, and 8.2 mills as a municipal rate, both of which are under the Duke rates. The Duke rates do not meet with the approval of the PWA authorities. We think they are excessive, and it is because we think they are excessive that the PWA approved this grant. That is one of the reasons for the approval of the grant. As to whether, if the Duke rates had met with the approval of the PWA authorities the loan and grant would have been approved, I can say that we (meaning PWA) have never approved a project where a privately owned company has made a satisfactory adjustment. That doesn't mean we will not. It is the policy of the PWA not to approve loans and grants where privately owned utilities have reduced their rates satisfactory to the PWA, and it was in line with that policy and because of that policy that I made the investigation as to the Duke rates. Rural electrification in South Carolina is low; only two per cent of the farms have rural electrification.

As to the policy of the PWA authorities in prescribing rates before approving a loan and grant, the procedure in Washington is this: I design the rate schedules, or nearly all are designed by me. We condition our reports and when a project is constructed those rate schedules must be applied. When an application is made for a loan and grant for a power project the PWA authorities investigate the rates for that project and prescribe the kind of rates the project must put into effect—the kind, the class, and the type of rate. The engineers of the PWA authorities fix the rates, and the PWA au-

(301) thorities do not approve a project unless the rates approved by its engineers are put into effect. The loan is conditioned on the rates being put into effect, and the rates fixed by the PWA authorities must be adhered to for the length of the life of the loan unless the borrower gets approval from Washington to change the rates. That adherence is a condition of the approval of the loan and grant.

In my direct examination I gave the following details of my estimate of $2,852,330 for the cost of the project:

"Preliminary expense	$ 7,000
Land and bridges	360,600
Clearing dam site	3,320
Access railroad	6,440
Dam	181,520
Penstocks and surge tanks	203,120
Power house, spillway and power station building	406,320
Hydraulic turbines, scroll cases, governors, electric generators, exciters, switch gear and step-up transformers	520,020
Transmission lines	314,500
Substations	162,000
Contractors' profit	125,000
Operators' housing	16,500
Shops	7,620
Two trucks and two autos	7,500
Engineering	60,000
Legal and administrative	30,000
Interest during construction	60,000
Contingencies	356,375

In the item of $360,600 for land and bridges I included the three bridges of the railroads over the Saluda and other bridges down there and the highway bridge. In estimating the cost of the land we (PWA) took the estimate of the applicant, Greenwood County. I cannot tell you what I included in the estimate for the railroad bridges. I haven't got my work sheets here. I just brought down this summary. (Referring to the figures given above.) My estimate in regard to raising the bridges was based on information obtained from conversation with employees of the Interstate Commerce Commission. I cannot name the men I talked to. I

(302) have never designed a railroad bridge, and am not familiar with the inspection and maintenance of wooden trestles. I have no data with me showing what changes the PWA would propose to make in the Seaboard bridge over Cane Creek. I think it was to be raised to a level of 445. It was our idea in Washington to begin far enough back and raise that bridge to 445 and to fill in approximately that trestle. That was the PWA idea. The individuals in the PWA that formed the idea were Major Oldsburg and myself. We were going to make that change on the present location under running traffic. I cannot tell you how much of the $360,600 shown in my estimate of cost under the item "land and bridges" is for land and how much for bridge changes.

Referring to my statement that I propose raising the Seaboard track over Cane Creek to elevation 445 I am not satisfied that that would be the elevation of the rail head. I would have to see the drawings we made and the details before I could answer that. The estimate about which I testified on direct examination was not very evenly pasted together by the stenographer, and included in the total of $2,852,330 there is an item of $160,000 for clearing which I did not include in my direct examination. Including this item I still get $2,852,330 as the total cost of the project, and there is still left an item for contingencies amounting to $337,040.

In giving the cost of clearing the reservoir I figured that there were 8000 acres to be cleared at an average cost of $20.00 an acre. As to the cost of the clearing I got the figure of $20.00 an acre from men in the U. S. Forest Service and U. S. Geological Service, who had actually been over the project. I can't name them. I do not know whether he has ever done any clearing. I am satisfied the men in the U. S. Geological Service with whom I talked about the cost of this clearing have never done any clearing. It is not in their line. I have never been in charge of the clearing of a reservoir site. I also talked with men in the U. S. Forest Service. I am not prepared to say whether they ever did any clearing, or whether it is in their line of duty to do clearing. Major Oldburg and I worked on this dam together. He has built the biggest dam in the world—Leguna.

I have been responsible for a dam—the Remel Dam.

(303) Two of us worked on it. I contributed as much as he. William Von Poole was the Chief Engineer.

I have never been responsible for the construction of a dam. In my estimate of cost I show $181,520 for the dam. The contract bids which the County has obtained for this item of the work amount to $239,331.

In my estimate of cost I show an item for penstocks and surge tanks amounting to $203,120. As to the question whether there are any penstocks and surge tanks in the Buzzard Roost development, the item "penstocks and surge tanks" shown on my estimate is a typographical error. In the statement I read as a part of my direct testimony I stated, "Bids have been received for the construction of the dam, penstock, surge tanks, etc.". That also is a typographical error. As to your question whether there are any penstocks shown by the present plans on which the County proposes to build this project I say that the plans that were sent to Washington show penstocks down to the turbines. As to whether the plans submitted to the Federal Power Commission show any penstocks, I never saw the plans submitted to the Power Commission.

I have not made my estimate of cost on the basis of the plans submitted to the Federal Power Commission, but on the basis of the plans which were sent to the PWA with the County's original application. The powerhouse has been moved downstream from the location shown on those plans. I do not know how far it has been moved. It has also been moved over the County line.

We carefully checked the new plans sent us and let our former estimates stand because the new plans and specifications were somewhat under the other. The item for surge tanks in the estimate which I have submitted was a typographical error. I don't think the item for penstocks is a typographical error. I think I am including in the estimate an item for penstocks. I don't recall what length of penstock I figured on. My recollection is that the original plans and specifications submitted to the PWA show a penstock and surge tank. The plans and specifications under which the County proposes to build this project do not provide for payment for a penstock. I will have to refer to my work sheets in Washington before I could say what I included in this item of $203,120. (The taking of testimony before the Special Master having been adjourned

(304) from Monday afternoon, June 17, 1935, to Wednesday morning, June 19, 1935, the witness was requested to be present at the next session of the hearing on Wedneday morning, and to have with him at that time his work sheets and other papers to which the witness has referred, in order that he may be examined in reference to them).

The hearing was resumed on June 19, 1935, and the cross-examination of the witness was continued as follows:

I have not yet obtained the work sheets which I referred to on Monday in the course of my testimony and which counsel for the plaintiffs requested me to obtain from Washington. I made the request by Air Mail that they be sent me but I have heard nothing from them as yet. Referring to the item of $203,120 which I show on my detail estimate for penstocks and surge tanks, in answer to your question as to whether this item covers the present waterways in the powerhouse, complete with all surrounding concrete, I say it does not cover the power station building, I believe. The penstocks, power station foundations, all the concrete work and the excavations go to that portion wherever the water is led to the wheels and from the wheels. This item of penstocks and surge tanks cover the present waterways in the power house which the County now proposes to build with all surrounding concrete and then some. The estimate containing this item of penstocks and surge tanks was made up by Major Oldburg and me when the first plans and specifications were received in Washington. Those plans and specifications did show steel penstocks and surge tanks and this item was intended to cover them. The application had been recommended by us. Secretary Ickes had approved it and the President had approved it, and then down here the plans had been changed. The allotment had been made. So Major Oldburg and I, he the hydraulic and I power, carefully checked the new plans, and found that they would cost less than the old plans, so we reported that to our superiors, and let the original estimate stand. I never saw the plans submitted to the Federal Power Commission.

(305) In my direct examination I stated that the PWA estimate for the dam, penstock, spillway and powerhouse building was $790,960, and that the bids received by the County for these items amounted to $622,190. The PWA estimate of $790,960 included the cost of flood gates, head gates, racks and cranes, whereas the bids do not include these items, so that the bid price of 622,190 is not for the same structures as those covered by the estimate of $790,960. I have also compared in my direct examination the bid price of 622,190 with what I referred to as the Duke Power Company's estimate of $932,000. This estimate was based on the County's original layout, with intake powers, penstocks and surge tanks, and with the powerhouse located on the other side of the river.. I am not certain whether it was based on a 6-gate spillway instead of a 4-gate spillway. The Duke estimate of $932,000 included flood gates, head gates, racks and cranes, whereas the bid price of $622,190 did not include these items. In my direct examination I also compared the bid price of $622,190 with what I referred to as the Duke Power Company's second estimate of $1,082,031. I haven't the second estimate to which I referred and cannot produce it. I cannot say whether this second estimate was based on 6 flood gates instead of 4 or not. It was based on earth fill entirely rolled instead of partially rolled. I think it included the cost of the diversion culvert shown on the County's drawings. It included the cost of flood gates, head gates, racks and cranes and everything completely installed except station wiring. The bid price of $622,190 covers rolling only the middle third of the dam, and does not include the cost of the other items to which I have just referred. I was also mistaken in saying that the bid price included the services of erection superintendents amounting to $5,000. I cannot say whether it included the cost of sodding the dam.

I stated on direct examination that the cost of hydraulic turbine equipment, electric generators, and stepup transformers were estimated by PWA at $571,580, whereas the actual bids for these items total $520,020, or a saving as compared with the estimate of $51,560. My detail estimate of cost shows only $520,020 as the PWA allowance for these items.

I stated on direct examination that the bid price of

(306) $520,020 was $213,551 less than the estimate of the Duke Power Company sent to President Roosevelt. I haven't a copy of the Duke Power Company estimate to which I referred. It is in Washington. I thought I had it with me. I cannot say whether the Duke Power Company estimate to which I referred included in the figure of $733,571 stepdown substations at the figure of $213,492 or not. If it did then it was within $59.00 of the bid price of $520,020.

In connection with my estimate of power output I cannot tell you how many hours a week I figured secondary power would be sold. I cannot give you that information in the absence of my work sheets which are in Washington. I cannot tell you what I allowed in my estimate for items 12, 13 and 14 shown on the County's Exhibit No. 7. That is in the work sheets which I haven't with me.

The statement which I read in my direct examination contains this statement. "The safety of the dam has been checked and approved by the PWA." That was done by Major Oldburg and me together. It was done in this way. I am a skilled mathematician and it isn't difficult for me to check calculations for a dam. Major Oldburg made the calculations and I checked them. (Plaintiffs move that the statement as to the safety of the dam be stricken out, inasmuch as it appears to be based on calculations made by Major Oldburg). The War Department also approved the stability and safety. (Plaintiffs move that the statement of the witness as to the approval of the War Department be stricken out). I have heard since I have been here that the War Department recommended the installation of additional spillway gate capacity. I have never had any experience in designing a fuse plug and fuse plug channel in earth. In estimating the firm or primary power output of the Buzzard Roost project we used a 10 ft. draw-down. We did not use all of that for primary power. I couldn't tell you how much we used for primary power in the absence of my work sheets, and for the same reason I cannot tell you when, with reference to the draw-down, I assumed secondary power would be cut off. I estimated primary or firm power on a monthly basis. I cannot tell you what load factor we used in figuring the

(307) power sales. That information is in the work sheets, and in their absence I cannot give it.

We arrived at the load factor by working it out from the list of industrial customers and municipalities.

RE-DIRECT EXAMINATION.

As a matter of fact in determining whether a loan will be made by PWA it is necessary to compare the applicant's proposed rates with the existing rates in the territory on account of competition. PWA has to see whether applicant's rates are low enough to make it worthwhile to change, and high enough to liquidate the debt and earn it some surplus.

The plans of the County engineers have been changed since the original application was made to the Public Works Administration. In my opinion those changes have improved the project.

When my breakdown estimate is reconciled with MR. Duncan's there is actually about a $100,000.00 saving on these bids.

W. A. BARNETT, witness for defendants, testified as follows:

DIRECT EXAMINATION.

I am a practicing veterinarian and am familiar with most of the territory covered by the Buzzard Roost project. I served as Mayor of Greenwood for four years. On the Greenwood side there is very little timber other than second growth. There are large trees along the banks of the river. Most of this territory has been sawed over in the last ten or twelve years.

The place on the Laurens Road owned by the Citizens Trust Company has been offered for $5.00 an acre. I think you could have bought the lands covered by the project for $15.00 an acre or less before the Buzzard Roost was mentioned. The people of this community are interested in this project. I think the people there would give anything they possibly could to see the project go through. All are unanimously in favor of it.

(308) A fair price to clear this land would be from $12.00 to $17.00 an acre.

CROSS EXAMINATION.

I couldn't tell you how many there are in the tracts to which I have referred that would be included in this development, nor have I any idea how many acres will be included in the development.

RE-DIRECT EXAMINATION.

When I was Mayor of Greenwood the question of renewing the contract with Duke Power Company arose twice. We really didn't have any difficulty in renewing the contract. It was just a matter of telling us what we would have to do, sign the contract. When I entered office the contract called for 1¢ per kilowatt hour, and the next contract we had was 1.52, and our consumption would carry it about 1.32. I guess the City Council wrestled with them for months to get a deduction of the contract. The Water and Light Commission considered making another connection. Just before I left office the rate was reduced a little. That was along about the last of March. The original contract we had was less than a cent.

RE-CROSS EXAMINATION.

The contract for 1¢ expired about 1932 or 1933. It was made about ten years prior. As to whether it was on a flat rate or on a sliding scale that is talking about something I don't know much about, that is so far as the technical part of the electricity was concerned and how the contract was drawn. Since we had the contract beginning at 1.52 under which we had an average rate of 1.32 we have entered into another contract at a reduced rate. When the rate was reduced the Power Company offered us a contract carrying the reduction.

RE-DIRECT EXAMINATION.

I would say 60% of the land on the Greenwood side is open land. You may have some bushes and things in there but I wouldn't consider them much.

(309) R. E. Mc'CASLAN, witness for the defendants, testified as follows:

DIRECT EXAMINATION.

I have been in politics in Greenwood County considerably; have represented the County in the General Assembly eight years; was Chairman of the Ways and Means Committee four years, Vice Chairman two years. I am familiar with that part of the territory known as Buzzard Roost which lies in Greenwood County. I would say about 50% or 60% of the land is cleared, that is, has nothing but briars, bushes and such on it. I think a fair average price for clearing the land would be $15.00 an acre.

CROSS EXAMINATION.

I have done some clearing of land; cleared some this year; just with my own help; I would say about ten acres; I have never had a proposition of this kind involving thousands of acres. I think the government rate for labor is 30¢ an hour.

RE-DIRECT EXAMINATION.

If the government's rate for labor is 40¢ an hour I guess it would cost $17.50 or $18.00 an acre to clear the land.

J. C. SMITH, witness for defendants, testified:

DIRECT EXAMINATION.

I am familiar with the Buzzard Roost territory, certainly from Cane Creek up to where the basin runs. Most of the land in Laurens County that would be taken in by the Buzzard Roost project has been cut over so far as saw-timber is concerned. There is only one place that I know of in the whole basin that has not been cut

(310) over in recent years. On the Laurens side 20 or 25% of the territory is in what you would call saw-timber, counting the saw-timber that would square 6 in. There is a good deal of the territory in briars, swamps and swamp bushes, and perhaps 25% in gum and small ash. Taking all into consideration there would certainly not be over 50% of what you would have to cut with axes that amounted to anything. Not over 20% of it is heavy timber—I don't think that much heavy timber. I have only had experience in clearing land on my own places. I would estimate the average cost of clearing this land on my side of the river at not over $10.00 an acre, I believe, but I do not know about the heavy. I haven't cleared anything like that. I haven't had any experience in that. I secured about 75% of the options on the land. There was no trouble at all hardly to secure them; almost none. In the area of the basin as I know it most of these lands are not worked now at all. There are very few acres that are worked. Some of them have been worked. I know my father worked corn 15 or 20 years ago, but because of the filling up of the river bed that had become so it couldn't be worked, and on account of the bushes and briars and it was utterly worthless in so far as bringing in an income to anyone. I should say that there are some bottoms that would be very valuable, but that is very little of that. I think $5.00 an acre would be a good price for most of it. I have had numbers and numbers of owners come to my office and ask me when I thought they would begin work. They were very anxious for it to go through and wanted to do anything they could.

CROSS EXAMINATION.

I have cleared some land. I paid my labor, wage hands and share croppers 50¢ and 75¢ a day, that was year before last. It didn't cost me over $5.00 an acre. I worked them mighty close from sun to sun. It was when I was getting ready to put the land into cultivation.

S. M. LEAMAN.
J. H. MILFORD.

(311) S. M. LEAMAN, witness for defendants, testified:

DIRECT EXAMINATION.

I have lived in Laurens County all my life, being engaged in the mercantile business and farming, and am familiar with the lands covered by the proposed Buzzard Roost project.

Leaving out the Buzzard Roost project I wouldn't think you could sell any of the land to be covered by the project at all. I believe you can buy every acre of it for $10.00 or $12.00.

J. H. MILFORD, witness for defendants, testified:

DIRECT EXAMINATION.

I live two miles from the City of Greenwood. Am engaged in farming and contracting. Have one farm less than a mile from the river and another about a mile and a half; these are the two closest to the Buzzard Roost project. I am familiar with the Buzzard Roost area in a general way. I have considered the question of clearing this area; have investigated it with that in view. From my observation of the property the clearing is very light so far as heavy timber is concerned. There is quite a bit of undergrowth that has been coming up for 8, 10 or 12 years. The heavy timber, or the majority of it, is on the river bank. In most places there is just a narrow strip up the river bank, but in some places it runs out. If they would give me the amount of acreage they have estimated I would love to have the clearing at around $20.00 an acre and certainly would like to have it for $25. Leaving out the Buzzard Roost proposition I would love to have the privilege of buying the land at $10.00 an acre. I wouldn't think the County would have any trouble at all in getting options and buying the entire land that they require there at $15.00 an acre.

(312) M. G. BOYLE, witness for the defendants, testified:

DIRECT EXAMINATION.

From what I know of the people in the community out there it is my opinion that the Buzzard Roost will not have any trouble in securing options at $15.00 an acre. If I had any land down there they would get it.

M. C. WILLARD, witness for defendants, testified:

DIRECT EXAMINATION.

In my opinion the County of Greenwood would not have any trouble in securing all the land they need at $15.00 an acre. They would not have any trouble so far as I am concerned.

EMMETT I. DAVIS, a witness for defendants, testified:

DIRECT EXAMINATION.

I am Secretary of Greenwood County Finance Board and have been actively interested in the Buzzard Roost project from the beginning. I have had general charge of procuring options on the property, and have been pretty well over the whole basin, but I couldn't say that I have been actually over the lands and bottoms—over the lands in details, or a great deal of it; some of it I have. I am a member of the Forfeited Lands Committee of Greenwood County which handles the lands that have been forfeited for taxes. I don't believe there has been a tract within the area that has been taken in for taxes, but there have been a number of tracts near the basin some of which the County still holds. The County took in one tract of 125 acres that is very near the water line which I have been trying to sell for two years at $1.75 an acre and haven't been able to sell it. We sold one tract of approximately 100 acres not far from the basin for $250, and I control a piece of land near the basin

(313) area which I would be glad to take $5.00 an acre for. I do not know of my own knowledge of any sales that have been made within the basin right recently. I think $5.00 or $6.00 an acre would be a liberal price for the lands within the area if there was no Buzzard Roost proposition in sight. The County experienced very little trouble in securing the options it took. It was only a rare instance that I had any trouble at all in securing an option. The people are almost if not entirely 100% behind the project, and they realize that the price of $15.00 an acre is a Godsend to them. The plan of the County in reference to the Buzzard Roost project is to sell the output primarily to the cities and urban and rural customers. I do not know of any new enterprises that Duke Power Company or Southern Public Utilities Company have brought to Greenwood County in recent years. There are only two that I recall in recent years coming to Greenwood, a cheese factory brought by local people, and a garment factory subsidized by local people to get it. At the present time the power companies are selling to the cotton mill industries in Greenwood only about 1,000,00 kilowatt hours a year; that is to the Matthews Mill in South Greenwood. I was told by Mr. Self that the Matthews Mill used from 9,000,000 to 10,000,000 kilowatt hours. A few years back Mr. Abney, who controlled the Panola Mill, and Grendel Mill No. 1, built his own steam plant. Prior to that time he was buying power from the Duke Company. The Duke Power Company is only furnishing approximately one-eighth of the power used in the County. They are at least not furnishing but a small percentage of the load that is already developed in Greenwood County. There is approximately 65,000,000 kilowatt hours consumption there, from information we have gathered from cotton mills, and probably 10,000,000 from smaller interests in Ninety-Six and Greenwood, and Duke sells approximately 7,500,000 kilowatt hours. They do not sell Ware Shoals or never have sold Ware Shoals. They have their own hydro and steam plant. I say they never have; not to my knowledge.

In securing options I have observed the timber land around about the project and I should not think there would be over fifty per cent where any material clearing would have to be done. We have options from a majority of the landowners in Newberry County.

(314) We figured on paying taxes in Greenwood County to the extent of school levies in the different districts which would be affected by the project. I estimated that this would amount to somewhere in the neighborhood of $1000 or $1200 in Greenwood County.

Defendants introduced in evidence as Defendant's Exhibit 36, Minute Book No. 1 of the Finance Board for Greenwood County, containing resolutions of said Board with reference to the Buzzard Roost project. The resolution of June 15, 1935 was passed partly on the suggestion of the PWA. The PWA didn't require and depreciation funds set up, except as may be required by local statute.

The total acreage that we ever had an option on, including the options that have expired and those that have not, is approximately 11,940 acres, and the average price of those is $15.83 per acre. I estimate that we have never had options on approximately 1500 acres. The agreements we have with Newberry and Laurens as to sharing profits on power consumed and used in their territory are in writing and copies of them have been furnished the plaintiffs and introduced in evidence.

CROSS EXAMINATION.

There are no other agreements with Newberry and Laurens except the written agreements which have been introduced in evidence. My information is that at present about 10% of the power used in Greenwood County is furnished by the Duke Company, and about 90% is furnished from other sources. In the County's application to the Federal Power Commission for a license there is given a list of customers with whom the County has made contracts for power, and all of the customers there given are customers of the Duke Power Company except rural electrification, 500,000 kilowatt hours, and the secondary power contract made with the Grendel Mills. Except the secondary contract with the Grendel Mills the County has not entered into any contract for the sale of power with any of the customers included in the 90% of power consumption in Greenwood County not now furnished by the Duke System. The County now proposes to extend its transmission lines to Goldville. The mills of Goldville are customers of Duke Power Company. So far as I know the Duke Power

(315) Company has met every demand or request for power which has been made on it in Greenwood County. According to the present plan of the County the powerhouse, spillway, approach to the powerhouse, tailrace canal, and step-up transformer station will all be located in Newberry County. We have no written agreements with Newberry or Laurens Counties with reference to the levy of taxes on property in those counties constituting a part of the project.

J. B. SLOAN, a witness for the defendants, testified:

DIRECT EXAMINATION.

I am 57 years old; was born in the Ninety-Six section of Greenwood County. Have been in the banking business for thirty-six years. Connected now with the Bank of Greenwood.

I would say that the lands in the territory covered by the Buzzard Roost Project are worth from $5.00 to $10.00 an acre.

About fourteen or sixteen years ago the Town of Ninety-Six, ambitious to grow, thought it was entitled to better electric service and approached Duke Power Company with regard to getting electric lights. I was on the Committee that negotiated with the Company. Duke took the position that the proposition was too small and entailed a possible liability and would not fool with it, but after a lot of persuasion and negotiations they agreed that they would sell the town power provided the town would buy and install the transformers at its own expense. When we went to renew the contract with the Duke Power Company they took the position that Duke must own the transformers. If they put in their own transformers the town's transformers would be worthless and therefore the transformers which cost the town $10,000 were sold to the Duke Power Company for $4,000.

Speaking as a taxpayer I do not regard Duke Power Company's service at Ninety-Six as adequate service.

With the exception of a few lines running out of Greenwood, Ninety-Six and Hodges there is no rural electrification in Greenwood County. I have heard of no arrangement being made by Duke Power Company to put in any.

CROSS EXAMINATION.

(316) I don't remember what revenue Ninety-Six was able to offer Duke Power Company at the time the original contract was made. The nearest transmission line of the Power Company was about a mile from the center of the town, possibly a quarter of a mile from the town limits. The town wanted to buy current from the Company to be distributed by the Town. I don't know whether the Railroad Commission fixed the rates at that time or not. I don't know whether the Power Company allowed the town a 10% reduction on account of the town putting in the transformers—not that I know of. When it came to renewing the contract I understand that the Railroad Commission had established the rates, and that under those rates it was contemplated that the Power Company would own its own substation, and the Power Company paid the town $4000 for the transformers which were ten or fifteen years old.

EVIDENCE FOR THE PLAINTIFFS IN REBUTTAL.

J. M. COSTELLO, a witness for the plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

At present I am Treasurer and Auditor of the Lexington Water Power Company, which company constructed and owns the Lake Murray development. I have a record of the cost of clearing that reservoir.

Q. What was the cost of clearing the reservoir?

Mr. W. D. Robinson: We object to this testimony upon the ground that it is not within the witness' personal knowledge, and on the ground that this testimony is not in reply, in that the matter of clearing was gone into in chief.

Taken subject to objection.

A. $1,597,989.36 as of December 31, 1931, in accordance with the records of the Lexington Water Power Company.

(317) Q. Are those records kept under your supervision? A. They are.

Mr. D. W. Robinson: We object on the further ground that the best evidence would be the production of the records.

Taken subject to objection.

I have these records with me. They are our original records kept under my direct supervision. I would hesitate to offer them in evidence. I have them available for examination by counsel for the defendants.

A total of 44,666.2 acres were cleared at an average cost per acre of $35.78. At the time this clearing was done common labor was paid 20¢ an hour. As to what part of the cost I have given represents overhead expense, I would say that in the total figure of $1,597,989.36 there is included an amount of $82,069.34 representing the engineering fee. The balance of the cost represents the direct costs in connection with the clearing. Roughly, this $82,000.00 is between 5% and 6% of the total cost.

Q. Now, Mr. Costello, what is the acreage of this development under normal water line?

Mr. D. W. Robinson: We object to that on the ground that this is not in reply, upon the ground that the witness doesn't know it of his personal knowledge, and upon the ground that the original records would be the best evidence.

Taken subject to objection.

A. At elevation 360, that would cover in that area 52,000 acres.

Q. And what was the total acreage acquired by your Company for the purpose of the development? A. Approximately 98,000 acres.

Q. Are those figures as to acreage based on your own knowledge, or the original records of your Company? A. They are based on the original records of the Company.

Q. Have you those records here? A. I don't have the records available with me, but they are distinctly shown by the records of the Company which are in Co-

(318) lumbia. Furthermore, if I may say so, as to the acreage, it is part of the record before the Federal Power Commission.

Mr. D. W. Robinson: We move to strike that out.

Taken subject to objection.

Q. Have you any records there showing the percentage of the clearing in the reservoir done by contract, and the percentage done by the Company?

Mr. D. W. Robinson: We object on the other grounds.

Taken subject to objection.

A. Approximately 60% was cleared by individual contracts, and the balance was cleared by the Company.

CROSS EXAMINATION.

These records that I brought represent our cost records on that development. They represent the original entries from the cost records themselves as we maintain a dual record. We carry two records: a detail of cost record and another one of primary accounts. The particular record I have here in evidence is the record of cost. It is confirmed in its entirety by our original records.

Mr. D. W. Robinson: I am making this examination subject to my objections.

The reference here is to either accounts payable vouchers, journals or payrolls. Those are our original records and you take those off and put on your ledger sheets. In so far as you refer to original records our payroll, of course, is the original but if you go into that source you naturally have to go into our time tickets and to bring along information of that character would be almost physically impossible. We have the original also but it is not here. The Duke Power Company under two contracts has contracted for 50% of our output at Lexington. I would not construe those auxiliary ex-

(319) penditures as "overhead". They represent our field office, our garage, and our shop expenses. The record for the year 1930 reflects these expenditures as clearing land for reservoir—auxiliary expenditures. On the lower sheet they are marked "overhead" expenses but the reference to "overhead" had particular reference to what was construed as field overhead—the field office at the dam, the garage, the shop expenses, and also the expense incurred in the office in Columbia.

These figures were presented to the Federal Power Commission for approval. They have recognized that the information I have given conforms to their examination that this was a cost incurred to the company. The Federal Power Commission has proposed the elimination of a certain proportion of that cost. Now, this examiner was admittedly just an accountant. He was not familiar with existing conditions in our clearing operations. His disallowance represented a disallowance of over $20.00 an acre which he construed, as I recall, that the company should not have expended over $20.00 an acre. He was not familiar with the fact that the contractors only cleared the light areas and were not equipped to cover the heavy areas which the company had to clear. I, myself, am an accountant. Roughly, I would say that we paid $20.00 per acre for the portion of land cleared under contract.

RE-DIRECT EXAMINATION.

There was no comparison between the clearing done under contract and the clearing done by the company. The clearing done by contract was done by individual farmers of this area. For the clearing done by the company, it had to have special equipment to get into this low swampy area. As a matter of fact, we tried contracting and were only successful in contracting out the light material. The average cost of clearing the heavy area was $42.00 an acre. The total amount of this auxiliary expense, which included the engineering fee, aggregated $275,373.98. The records which I have shown Mr. Robinson would be what I would construe as the original records in connection with this development. They are our original ledger records, insofar as they are a part of our general accounting records in connection with the cost of the development. I tried to state formerly, our

(320) accounting records represent journals, ledgers, certain definite detail records, and also cost records. In other words, they are composed of several kinds of records all of which I would consider original records.

CHARLES S. REED, a witness for the plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

I am employed by the Duke Power Company and am a director of that company. I have been regularly connected with the Duke Power Company for a little over a year. Prior to that time I was a consulting engineer specializing in gas and electric rate cases, appraisals, and financial examinations. During the 8 years I was in business for myself, and my previous experience of 15 years with the Doherty interests, my experience included rate appraisals and financial examination work for more than 50 companies operating in more than 30 states. That covers my experience briefly.

Q. To make it brief, Mr. Reed, did you hear Mr. Rose's criticism of the Duke Power Company rates—

Mr. D. W. Robinson: Mr. Master, I wish to interpose my objection to this question, and ask that it run through the testimony of this witness and other evidence in reply, on the ground that all the questions in the case were gone into by the plaintiffs in chief, and under the rules of this Court it is not proper for these matters to be gone into in reply.

Q. —on the ground that they were thirty years behind the time? A. I did.

Mr. Rose offered the Hopkinson demand type rate as the proper rate. The textile rate of the Duke Power Company, the 1-A rate, which is the one mentioned most often, has the most desirable features of the demand rate, which is the fact that it gives a low rate to customers with good load factors, but it doesn't contain the undesirable feature which is that it increases the bills of a large number of customers. If the Duke Power

(321) Company were to put into effect the Hopkinson demand rate, to which Mr. Rose refers, it would increase the rates of a good many of the Duke customers. The Duke customers are given all the features of the Hopkinson demand rate which result decreasing the bills and are not penalized with any features that would increase the bills.

I heard Mr. Rose's testimony as to rural rates in the United States.

Q. Do you know the type of service which is covered by what is commonly referred to as the average rural rate in the United States? A. The definition of that varies. It is generally considered to be the service to small communities and rural territory, but the census figures, as I understand it, also include a large amount of pumping in the territories in the western states.

Mr. D. W. Robinson: Objection. We move to strike that out.

Taken subject to objection.

Q. Mr. Reed, how does the average rate in the western states, where this power is used for irrigation or for pumping, compare with the rates for rural service in the eastern United States? A. That we may explain by separating the rural service east of the one hundredth meridian, which passes through Nebraska and Kansas, from the territory west of the one hundredth meridian. East of the one hundredth meridian, the average rate per kilowatt hour for rural service is 6.6 cents, and west of the one hundredth meridian, the average rate is 1.8 per kilowatt hour. The census figures are for the year 1932. The prices for the year 1934 show 6.12 for east of the one hundredth meridian, and 1.62 for west of the one hundredth meridian.

Mr. D. W. Robinson: Let me interpose an objection on the ground that the census records themselves are the best evidence.

Taken subject to objection.

The reason for the difference in the average rate is

(322) the very low rate in the State of California, and the enormous quantities that have been sold there, for irrigation purposes. The rural rate in the Piedmont territory would not compare with the average rate for rural service for the entire country—for the western United States. It would compare more favorably with the figure for the eastern half.

The average price received by the Duke Power Company, and prior to the consolidation by the Southern Public Utilities Company, for rural service for the year 1934 was 4.4¢ per kilowatt hour. The reduction in 1934 was applicable to rural rates but that occurred in September so that these figures include only four months of the rate reduction. If the rate reduction had been applied for the entire year, the average price per kilowatt hour would have been close to 4¢. If the Duke Power Company should apply to its rural customers the rate mentioned by Mr. Rose of 3¢ per kilowatt hour with a minimum rate of $4.25 per customer, this rate would raise the bill of the Duke customers about 55%; that is the farm and rural resident customers. The rural rates of the Arkansas Light and Power Company referred to by Mr. Rose are more than 30% higher than the rates of the Duke Power rural service. The rates of the Mississippi Power and Light Company, referred to by Mr. Rose, are more than 33% higher than the rural rates of the Duke Power Company. As near as I can find out, the New Orleans Public Service Company has no rural rates as referred to by Mr. Rose and furnishes no rural service whatsoever. The territory outside of New Orleans is supplied by the Louisiana Power and Light Company. The rates of the Louisiana Power and Light Company for rural service are 36% higher than the rates of the Duke Power Company. The textile rates of the Duke Power Company are the most favorable rates that I know of.

CROSS EXAMINATION.

Mr. D. W. Robinson: Mr. Walters please note that I move to strike out the testimony of the witness on the ground that it is not in reply, is largely hearsay, and is not the best evidence. I make this cross-examination subject to this objection, and am not waiving it.

(323) I have not gone and inspected the lines of the New Orleans Public Service Company. The information I am testifying to is what I learned upon inquiry. I have never inspected the lines of the Arkansas Light and Power Company or the Mississippi Power and Light Company, but I know the rates as given in the rate book and by corroborating it with the officials of the company. I have done that by telegraph. I am familiar with the Mississippi Power and Light Company. I have no figures which would enable me to compare the population density of the territory served by the Mississippi Power and Light Company or of the territory served by the Arkansas Light and Power Company with that of the territory served by the Duke Power Company. Customer density is not necessarily a material matter to determine in comparing rates. I am merely comparing rates, not conditions.

Mr. W. S. O'B. Robinson: I would like to state that this testimony is offered only in reply to Mr. Rose, and in reply to Mr. Rose's comparison of those rates with the rates of the Duke Power Company. If Mr. Rose did not intend to make a comparison of those rates with the rates of the Duke Power Company, and that part of his testimony is not to be considered in the case, I don't insist on this.

Customer density is a factor in determining rural rates. The reason there are not rural lines all over our territory is that the customer density is too small. The customer density in this territory is very small. The rates of the Potomac Electric Power Company do not compare with the Duke rates. They have an entirely different situation. Not only is their customer density greater than that of the Duke Power Company but also the Potomac Electric Power Company has a very favorable condition in that it serves the City of Washington with a highly concentrated load, whereas, the load of the Duke Power Company is spread over a very large territory. The rural rate of the Potomac Electric Power Company rate starts at 80¢ for 10 kilowatt hours. If the minimum bill of the Potomac Electric Company is 50 kilowatt hours then the Potomac rate on that basis would start with $1.95 for each customer as against Duke's 80¢. The

(324) Duke Power Company rate does not start about twice as high as the Potomac Electric Power Company. You can't compare the rates on that basis. The rate speaks for itself. It is 80¢ for 10 kilowatt hours. That is merely a minimum bill of 80¢ for which 10 kilowatt hours are included. If a customer uses as much as 10 kilowatt hours his price would be 8¢ per kilowatt hour but that is not the rate.

I am rate engineer for the Duke Power Company. We are always working on studies of the rates in effect but at the present time I have no changes to recommend, and I have no specific changes in mind to be made in the rates of the Duke Power Company in the future. I am a specialist in rate matters and have done a great deal of this kind of work.

RE-DIRECT EXAMINATION.

The Duke Power Company rate of 80¢ for the first 10 kilowatt hours is the minimum bill. I do not know what the minimum bill of the Potomac Electric Power Company is. There is no service charge. It is my job with the Duke Power Company to continuously keep up with the rates daily and the conditions in the territory served by the company, and as changed conditions come about to make such changes or adjustments in rates or rate schedules as can be made to render the best serviee to the customers at the cheapest possible price.

STATEMENT OF EVIDENCE.

PART III.

PLAINTIFFS' EXHIBIT #6.

Nov. 10, 1933.

Mr. L. Jeffords, Superintendent,
C. & W. C. Railroad,
Augusta, Ga.

Dear Sir:

The County of Greenwood plans to build a dam

(325) across Saluda River about 15 miles below the C. & W. C. railroad bridge across Saluda River between Greenwood and Laurens.

We have not definitely decided whether or not to develop a 60 ft. head or a 65 ft. head plant. Should we decide upon a 60 ft. head plant your railroad bridge would have to be raised 4.1 ft. in order to give a clearance beneath the bottom cord of the main span of 4 ft. The bottom of your bottom cord is at an elevation of 439.87. The top of the rail on the main span of the bridge is 445.07. In other words should we develop a 60 ft. head plant the water level beneath your bridge would be 0.13 above the bottom of your bottom cord.

We prefer to develop 65 ft. at this time unless the matter of raising several bridges is too expensive. Should we develop the 65 ft. head the bridge would have to be raised 9.1 ft. to obtain the same 4 ft. clearance.

Would you be so kind as to give us approximate estimates of cost covering the two cases, that is the 60 ft. head proposition and the 65 ft. head proposition. We are very anxious to get our preliminary estimate of cost covering this proposition to Washington next week. We would like to ask that you, if possible, give us some approximate figures that we might use in our estimate which we are preparing. Of course we would appreciate a pretty close estimate of cost covering the situation but we thought that this would take you more than a week to prepare.

If it is not too much trouble it would be greatly appreciated if you would visit us here at Greenwood and discuss the matter with us. We understand that any estimate that you might give us will not in any way be binding at the present time.

With kind personal regards, I remain,

Yours very truly,

(S) D. T. DUNCAN,
Engineer in Charge.

(326) **PLAINTIFFS' EXHIBIT #7.**

ATLANTIC COAST LINE RAILROAD COMPANY

Office of Chief Engineer

Wilmington, N. C.

J. E. Willoughby,
Chief Engineer. November 14, 1933 WG

Mr. D. T. Duncan, Engineer in Charge,
Finance Board for Greenwood County,
Greenwood, S. C.

Dear Sir:

Referring to your letter of the 10 instant to Mr. L. S. Jeffords, Superintendent, Charleston & Western Carolina Railroad.

I enclose you estimate of cost of raising the bridge which carries the Charleston & Western Carolina Railroad over the Saluda river and the approach trestles by 4.1 feet and also by 9.1 feet.

Yours truly,

J. E. WILLOUGHBY,
Chief Engineer.

enc.
Cy
Mr. Jeffords.

Copy.

PLAINTIFFS' EXHIBIT #8.

ESTIMATE—Cost to raise Saluda River Bridge, C. & W. C. railway, near Coronaco, South Carolina, account proposed construction of dam by Greenwood County.

A. 4.1 ft raise

Raise steel bridge—254 ft long	$ 400
Blocking	2250
Steel grillages 45,000# at 5¢	360

(327) Concrete material—30 cu. yds. at $12.00		
Labor	1500	$ 4510
Raise wood trestle—825 ft. long		
Blocking and frame bents 115,000 B.M.F. at $25	$ 2875	
Hardware	200	
Labor raising and framing	2300	5375
Raise grade		
Fill 19,000 cu. yds. at 40¢	$ 7600	
Track work 2400 ft. at $1.00	2400	10,000
Engineering and Incidentals		1,985
		$ 21,870
B. 9.1 ft. raise		
Raise steel bridge 254 ft. long		
Blocking	$ 500	
Steel grillages, 90,000 at 5¢	4,500	
Foundation piles 4800 ft. at 50¢	2,400	
Rein. conc. pier jackets 975 cy at $25	23,125	
Labor raising spans	2,500	$ 33,025
Raise wood trestle 825 ft. long		
Blocking & frame bents, 200,000 BMF at $25	5,000	
Labor raising and framing	4,000	
Hardware	500	9,500
Raise grade		
Fill 62,000 c.y. at 40¢	24,800	
Track work 2900 ft. at $2.50	7,250	32,050
Engineering and Incidentals		7,355
		$ 80,930

Office of Engineer of Metal Structures,
Wilmington, N. C., Nov. 14, 1933.

Copy.

(328) **PLAINTIFFS' EXHIBIT #9.**

ATLANTIC COAST LINE RAILROAD COMPANY

Office of Chief Engineer

Wilmington, N. C.

J. E. Willoughby,
Chief Engineer

Feb. 1, 1935 WG
at Richmond

Mr. D. T. Duncan, Chief Engineer,
Finance Board of Greenwood County,
Greenwood, S. C.

Dear Sir:

I enclose you detail of the estimate aggregating $260,000 for permanent structure to carry the C&WC over the Saluda river at an elevation of 9′ above the present.

I will tomorrow send you from Wilmington the estimate of cost which you asked for raising this trestle 4′ and providing for

(1) a permanent structure of steel and concrete;

(2) a creosoted ballast deck trestle.

In sending you these estimates it is not to be understood that this engineering information which I furnish is in the nature of an authority to Greenwood County to proceed with the work and it is not to be understood as an approval of any engineering plans which you may have in contemplation.

The authority for raising the C&WC grade will, of course, be passed on by the Board of Directors and I, as chief engineer of the C&WC, would want to have opportunity to analyze the plans which you have for the construction which would result in the raising of the water at the C&WC crossing.

(329) I am sending a copy of this letter to Messrs. Johnson & Roberts, Engineers at Marion, S. C.

Yours truly,

J. E. WILLOUGHBY,
Chief Engineer.

CY Johnson & Roberts

COPY

(The estimate herein referred to is identical with that included as plaintiffs' exhibit #10.)

PLAINTIFFS' EXHIBIT #10.

CHARLESTON AND WESTERN CAROLINA RAILWAY

ESTIMATED COST TO RAISE GRADE AT SALUDA RIVER CROSSING 9.0 FT., PAVE SLOPES WITH RIPRAP, REPLACE WOODEN TRESTLE WITH STEEL VIADUCT, AND REINFORCE THE EXISTING CHANNEL SPAN PIERS. ACCOUNT PROPOSED DAM CONSTRUCTION BY GREENWOOD COUNTY.

Approach Fills

Fill 90,000 C. Y. @ 40	$36,000	
Raise Track, 25,000 ft. raised 1 ft. @ .20	5,000	
Cross ties replaced 50% 900 @ 1.25	1,125	
Track fastenings, etc.	350	
Ballast 1,600 C. Y. @ 1.50	2,400	
Tee walls for fills 300 C. Y. @ .15	4,500	
Paving for filfs in water 5,200 C. Y @ 6.00	31,000	$ 80,375

Steel Viaduct Replacing Wood Trestle

14—60' D. P. G. Spans on Plain Concrete Piers—Pile Foundation:	
Excavation 980 C. Y. @ 1.00	980

(330) Foundation piles 24,640 ft. @ .50	12,320	
Concrete 1,890 C. Y. @ 20.00	37,800	
Steel spans in place 826,000 lbs. @ 5½	45,430	
Creosoted deck 62 M.B.M. ft. @ 90.00	5,580	
Painting	2,065	
Raise present track 3'-6"	4,000	
Additional piles and caps	2,920	111,095
Raising Two Existing Steel Truss Spans—9 ft.		
Blocking	500	
Steel grillages 90,000 lbs. @ 5¢	4,500	
Foundation piles 4,800 ft. @ .50	2,400	
Reinf. conc. pier jackets 925 c.y. @ 25.00	23,125	
Labor raising spans	3,000	
5½ ft. runoff at each end of truss spans	4,500	38,025
Miscellaneous		
Delays to trains 500 hrs. @ 5.00	2,500	
R. R. Supervision	5,000	
Telegraph service	2,500	10,000
Engineering and Contingencies		20,505
		$ 260,000

A.O.L.R.R.
Office of Engineer Metal Structures
Wilmington, N. C. Jan. 9, 1935 ggt.

PLAINTIFFS' EXHIBIT #13.

STATEMENT OF TRANSMISSION & DISTRIBUTION LINES IN GREENWOOD, LAURENS AND NEWBERRY COUNTIES—DUKE POWER SYSTEM AS OF DECEMBER 31, 1934.

	Greenwood Cty. Miles of		Laurens Cty. Miles of		Newberry Cty. Miles of		Total Miles of	
	Struct.	Cir.	Struct.	Cir.	Struct.	Cir.	Struct.	Cir.
TRANSMISSION LINES								
Duke	47.55	76.35	42.99	59.56	90.87	172.65	181.41	308.56
S. P. U.			24.85	25.15			24.85	25.15
Total	47.55	76.35	67.84	84.71	90.87	172.65	206.26	333.71
DISTRIBUTION LINES								
Duke	.82				1.05		1.87	
S. P. U. Urban & Suburban	3.34		29.17		8.45		40.96	
S. P. U. Rural	7.48		119.93		1.35		128.76	
Total	11.64		149.10		10.85		171.59	
Grand Total	59.19		216.94		101.72		377.85	

(332) **PLAINTIFFS' EXHIBIT #14.**

REDUCTIONS IN RATES MADE BY PLAINTIFFS SINCE DECEMBER 1, 1928.

December 1, 1928	$ 519,400
November 1, 1932	1,515,500
May 1, 1933	418,100
September 1, 1934	1,335,000
March 1, 1935	118,500
Total	$3,906,500

PLAINTIFFS' EXHIBIT #15.

DUKE POWER COMPANY

SCHEDULE NO. 1-A

Primary Power for Textile and Grain Mills Contracting for 100 Kilowatts and over.

Kilowatt Hours Per month	Per Kilowatt Hour
First 50,000	1.225 cents
Next 100,000	1.20 cents
Next 100,000	1.15 cents
Next 100,000	1.00 cent
Next 150,000	.85 cent
All over 500,000	.775 cent

This schedule is subject to the following classifications and conditions:

CLASS 1:

Consumers contracting to take from the Power Company all power required for the operation of their plants or some definitely segregated portion thereof will be allowed the discounts hereinafter stated; and except in special cases where a higher minimum charge may be agreed upon between the Company and the Consumer, will be charged a minimum amount of $200.00 a month.

(333) CLASS 2:

Consumers supplying a part of their power requirements from their own power plants and obtaining the remainder from the Power Company shall have the option of contracting:

(A) For the payment of a monthly minimum charge of $2.00 per kilowatt of the capacity of their own plants, but in no case shall said monthly minimum charge be less than $200.00; and such Consumers will be allowed the discounts hereinafter stated for power taken from the Power Company; or

(B) For the payment of a monthly minimum charge of $2.00 per kilowatt of the Consumer's maximum demand, as hereinafter defined, but in no case less than an amount to be agreed upon between the Consumer and the Company, which amount shall in no event be less than $200.00. No discounts will be allowed Consumers in this class; but if in any month their minimum charge exceeds the value of the kilowatt hours taken in that month, computed at the above scale of rates, the amount of such excess when paid shall be credited by the Power Company on any bill or bills thereafter rendered the Consumer for power sold and delivered to it within 12 months following the month for which such excess shall accrue, provided that such credit shall be applied only on so much of any such bill as is in excess of the minimum charge applicable to the month for which such bill is rendered.

MAXIMUM DEMAND:

The maximum demand to be used and applied by the Power Company in computing each monthly bill of consumers under this schedule shall be the maximum number of kilowatts taken by the Consumer for a continuous period of thirty (30) minutes within the preceding three (3) months, including the month for which the bill is rendered. The maximum demand will be established by demand meters to be installed by the Power Company, and pending their installation may be estimated. The term month as used in this paragraph means the period intervening between meter readings for purposes of monthly billing, such readings being taken once a month.

(334) DISCOUNTS:

Discounts will be allowed consumers under Class 1 and Class 2-A each month in which such consumer makes use of its maximum demand for over 240 hours, as follows: 10% of the kilowatt hour charges for use of the maximum demand over 240 and not exceeding 300 hours; 20% over 300 and not exceeding 360 hours; and 40% over 360 hours.

DUKE POWER COMPANY

SCHEDULE NO. 10

Rates for primary power to consumers whose principal business is the resale and distribution of electric energy, and to municipalities for resale and/or for municipal power purposes, contracting for 100 kilowatts and over.

Demand Charge:

Kilowatts Billing Demand		Per Kilowatt
First	300	$ 1.15
Next	700	$ 1.00
All over	1,000	$ .90

PLUS AN

Energy Charge:

Kilowatt Hours Per Month		Per Kilowatt Hour
First	50,000	.82 cent
Next	150,000	.80 cent
Next	200,000	.75 cent
All over	400,000	.70 cent

DETERMINATION OF DEMAND

CLASS 1:

For Consumers contracting to take their entire power requirements from the Power Company, the demand for billing purposes each month shall be the maximum integrated thirty-minute demand during said month, but not less than 100 kilowatts.

(335) CLASS 2:

For Consumers who do not contract to take their entire power requirements from the Power Company, the demand for billing purposes each month shall be the maximum integrated thirty-minute demand during said month, but not less than 75 per cent of the highest integrated 30-minute demand in the previous twelve months, including the month for which the bill is rendered, nor less than 75 per cent of the contract demand, nor less than 100 kilowatts.

MINIMUM MONTHLY CHARGE

The minimum monthly charge shall be the demand charge.

PLAINTIFFS' EXHIBIT #16.

SOUTHERN PUBLIC UTILITIES COMPANY

Electricity No. 1
Second Revised Leaf No. 4
Superseding First Revised Leaf No. 4

SCHEDULE NO. 1

RESIDENTIAL ELECTRIC SERVICE

Available only for lighting, cooking, heating, refrigeration and incidental power which is entirely of a residential nature.

The Company will, at its option, furnish either approximately 110 volt, 2 wire, or 110/220 volt, 3 wire, 60 cycle, single phase meter service.

Motors under 2 horse-power, 110 volt, may be installed and the total consumption billed under this Schedule, but the Company does not guarantee the voltage regulation of such mixed installations.

Motors frequently started, or arranged for automatic control, must be of a type to take the minimum starting

(336) current and must be equipped with controlling devices approved by the Company.

RATE

80 cents for the first 10 KWH, or less, used per month.
6½ cents per KWH for the next 20 KWH used per month.
3 cents per KWH for the next 100 KWH used per month.
2½ cents per KWH for all over 130 KWH used per month.

TERMS OF PAYMENT.

The above are net rates and apply only in case a bill for service furnished under this Schedule is paid at the office of the Company on or before the tenth day after its date. If not so paid, the gross rates, which are the above rates plus 5 per cent, then apply.

TERM OF CONTRACT.

The original term of this Contract shall be one year, and thereafter it shall be taken as a yearly contract and may be terminated at the end of any year by either party on thirty days' written notice.

SOUTHERN PUBLIC UTILITIES COMPANY

Electricity No. 1
First Revised Leaf No. 4-B
Superseding Original Leaf No. 4-B
And changing types of service.

SCHEDULE NO. 1-W

WATER HEATING SERVICE

The company will furnish approximately 220 volt, single phase, 60 cycle, metered service for water heating purposes only, provided the water heaters are of the storage type, with at least ten gallons of storage capacity for each one kilowatt of heating capacity and further

(337) provided the hours of use are under the control of the company and may be limited to fifteen hours out of each twenty-four.

RATE

1½ cents per KWH for the first 200 KWH used each month.
1 cent per KWH for all over 200 KWH used each each.

MINIMUM

The minimum monthly bill shall be $1.00.

TERMS OF PAYMENT

The above are net rates and apply only in case a bill for service furnished under this Schedule is paid at the office of the Company on or before the tenth day after its date. If not so paid, the gross rates, which are the above rates plus 5 per cent, then apply.

TERM OF CONTRACT

The original term of this contract shall be one year and thereafter it shall be taken as a yearly contract and may be terminated at the end of any year by either party on thirty days' written notice.

It is understood that current furnished under this rate is solely for water heating purposes.

PLAINTIFFS' EXHIBIT #17.

(338)

DUKE POWER COMPANY

(Including Southern Public Utilities Company)

POWER SOLD AND DELIVERED IN GREENWOOD, LAURENS, AND NEWBERRY COUNTIES, SOUTH CAROLINA, (EXCLUDING INTER-COMPANY SALES) FOR THE CALENDAR YEAR 1934.

	Date of Beginning of Service	No. of Customers	Sold By	Kilowatt Hours. Delivered
Greenwood County				
Town of Greenwood	4/17/97	1	Duke	4,119,600
Mathews Cotton Mill—Greenwood	10/18/13	1	Duke	908,460
Grenco Oil Company—Greenwood	1/1/20	1	Duke	668,600
Iva B. Stockman—Greenwood	6/1/15	1	Duke	43,660
Town of Ninety-Six	7/4/17	1	Duke	589,580
Piedmont & Northern Rwy. Co.—Downs	3/1/15	1	Duke	1,631,400
Misc. Consumers, consisting of Residential Consumers, Churches, Stores, etc.		118	S.P.U.	69,799
Total Greenwood County		124		8,031,099
Laurens County				
Joanna Cotton Mills—Goldville	2/1/25	1	Duke	10,260,480
Laurens Cotton Mills—Laurens	8/1/27	1	Duke	5,515,000
Watts Mills—Laurens	5/1/27	1	Duke	2,929,800
Town of Clinton	2/1/25	1	Duke	1,655,600
Clinton Cot. Mills—Clinton, S. C.*	8/1/25	1	Duke	2,090,400
Lydia Cot. Mills—Clinton, S. C.*	3/1/25	1	Duke	1,239,360
Comm. Public Works—Laurens, S. C.	1932**	1	S.P.U.	1,305,300

(339) Kattermann & Mitchell	"	1	S.P.U.	212,520
Laurens Glass Works	"	1	S.P.U.	1,264,420
Carolina-Georgia Service Company	"	1	S.P.U.	167,026
City Ice Company—Laurens, S. C.	"	1	S.P.U.	173,700
Gins		20	S.P.U.	253,602
Misc. Consumers consisting of Residential Consumers, Churches, Stores, etc.		856	S.P.U.	365,620
Total Laurens County		887		27,432,828
Newberry County				
Newberry Cotton Mills—Newberry	8/1/11	1	Duke	2,585,520
Oakland Cotton Mills—Newberry	1/8/12	1	Duke	4,318,920
Mollohon Manufacturing Co.—Newberry	1/7/12	1	Duke	6,867,000
Comm. Public Works—Newberry	12/1/14	1	Duke	1,974,740
Farmers Oil Mill—Newberry	9/18/11	1	Duke	889,700
Town of Prosperity	11/12/20	1	Duke	176,983
Aragon-Baldwin Cot. Mills—Whitmire	4/20/12	1	Duke	9,600,000
Gins		1	S.P.U.	11,200
Ice Plants		1	S.P.U.	102,360
Misc. Consumers consisting of Residential Consumers, Churches, Stores, etc.		170	S.P.U.	152,488
Total Newberry County		179		26,678,911
GRAND TOTAL		1,190		62,142,839

NOTE—Power is sold wholesale to the following municipalities viz: Greenwood, Ninety-Six, Clinton, Laurens, Newberry, Prosperity and plaintiffs have no record of the number of ultimate customers to whom such power is retailed by these municipalities.

*—Discontinued May, 1934.

**—Customers of National Utilities Company prior to 1932.

(340) **PLAINTIFFS' EXHIBIT #18.**

STATEMENT SHOWING CUSTOMERS NOW SERVED BY DUKE POWER SYSTEM IN GREENWOOD, LAURENS, AND NEWBERRY COUNTIES, SOUTH CAROLINA, WHO ARE LISTED IN THE APPLICATION OF GREENWOOD COUNTY FILED WITH THE FEDERAL POWER COMMISSION, SEPTEMBER 13, 1934, AS CUSTOMERS WITH WHOM THE COUNTY NOW HOLDS CONTRACTS FOR THE SALE OF PRIMARY POWER TO BE PRODUCED BY THE BUZZARDS ROOST PLANT, OR AS PROSPECTIVE CUSTOMERS FOR THE SALE OF PRIMARY POWER FROM SAID PLANT. ALSO SHOWING ACTUAL SALES IN K.W.HRS. BY DUKE POWER SYSTEM TO SAID CUSTOMERS IN 1934, AND GREENWOOD COUNTY'S ESTIMATE OF ANNUAL POWER CONSUMPTION OF SUCH CUSTOMERS.

CONSUMERS WITH WHOM GREENWOOD COUNTY HOLDS CONTRACTS	Sales by Duke Power System For Year 1934 (In K.W Hrs.)	Greenwood County's Estimate of Annual Power Consumption (In K.W. Hrs.)
Primary Power		
City of Greenwood	4,119,600	6,000,000
Grenco Oil Mill	668,600	750,000
Town of Ninety-Six	589,580	750,000
City of Newberry	1,974,740	3,000,000
Farmers Oil Mill & Ice Plant	889,700	1,000,000
City of Laurens	1,305,300	2,000,000
Laurens Glass Works	1,264,420	1,200,000
Rural Electrification		500,000
Misc. Consumers consisting of Residential Consumers, Churches, Stores, etc.	1,295,795	
	12,107,735	15,200,000

(341) Secondary Power		
Grendel Cotton Mills		3,000,000
Total Primary & Secondary Contracts		18,200,000
PROSPECTIVE CUSTOMERS IN THE BUZZARDS ROOST AREA		
Primary Power		
City of Clinton	1,655,600	1,200,000
Cotton Mills at Goldville	10,260,480	15,000,000
Cotton Mills at Newberry	13,771,440	20,000,000
City of Prosperity	176,983	500,000
Cotton Mills at Greenwood	952,120	17,000,000
City of Abbeville		1,200,000
City of Edgefield		1,200,000
Cotton Mills at Laurens	8,657,320	15,000,000
Rural Electric Customers		1,000,000
	35,473,943	72,100,000
Secondary Power		
Cotton Mills at Clinton		17,000,000
Cotton Mill at Ninety-Six		9,000,000
Cotton Mills at Abbeville		3,000,000
Cotton Mill at Edgefield		3,000,000
		32,000,000
Total prospective Customers—Primary & Secondary		104,100,000
CUSTOMERS OF DUKE POWER SYSTEM WHICH ARE NOT SHOWN IN THE COUNTY'S APPLICATION AS HAVING MADE CONTRACTS OR AS PROSPECTIVE CUSTOMERS OF THE COUNTY.		
Piedmont & Northern Railway	1,631,400	
Mills at Clinton (Discontinued May 1934)	3,329,760	
Aragon-Baldwin C. M.—Whitmire	9,600,000	
	14,561,160	
Grand totals	62,142,838	122,300,000

PLAINTIFFS' EXHIBIT #19.

(342) DUKE POWER SYSTEM—SOUTH CAROLINA

TAXES PAID FOR THE CALENDAR YEAR 1934.

	Duke Power Co.	Sou. Pub. Util. Co.	Total
Annual Statement	20.00	10.00	20.00
3 Mills License Tax on Gross Receipts	15,925.31	9,540.97	25,466.28
Property License Tax	128,198.91	33,392.48	161,591.39
S. C. Railroad Commission	6,914.18	4,291.87	11,206.05
Electric Utilities Division	16,290.09	8,438.31	24,728.40
Electric Power Tax	388,138.07	42,260.71	430,398.78
Chain Store Tax		225.00	225.00
Municipal License Taxes	879.75	7,294.00	8,173.75
Property Taxes	471,055.27	235,085.42	706,140.69
State Income Tax	88,834.90	21,510.69	110,345.59
	1,116,256.48	362,049.45	1,478,305.93
Federal Excise Taxes		42,468.02	42,468.02

	Duke Power Co.	Sou. Pub. Util. Co.			
Federal Income Tax	380,259.09	126,152.49			
New Jersey Corporation Tax	8,814.98				
Maine Franchise Tax		650.00			
Tax on Bonds and Bond Interest	3,545.21	3,590.18			
Federal Excise Taxes	1,062.49	281.08			
Capital Stock Tax	50,000.00	20,000.00			
Documentary Stamp Taxes	92.40				
	443,774.17	150,673.75			
Allocated on Basis of Gross Receipts in South Carolina	32.05%	25.13%	142,229.62	37,864.31	180,093.93
Gross Receipts in South Carolina			1,258,486.10	442,381.78	1,700,867.88
Ratio Taxes Gross Receipts			4,572,649.50	3,315,150.21	7,887,799.71
			27.52%	13.34%	
Inter-Company Sales Eliminated			*742,332.37*	*47,957.08*	*790,289.45*
					7,097,510.26
Ratio of combined taxes to combined gross receipts					23.96%

(344) **PLAINTIFFS' EXHIBIT #20.**

DUKE POWER SYSTEM

TAXES—GREENWOOD COUNTY

	Duke Power Company	Southern Public Utilities Co., including Savannah River Power Co.	Total
1929	$3,243.55	$251.21	$3,494.76
1930	3,456.87	280.06	3,736.93
1931	4,315.00	451.86	4,766.86
1932	5,032.65	440.96	5,473.61
1933	4,358.40	370.58	4,728.98
1934	4,437.72	372.55	4,810.27

PLAINTIFFS' EXHIBIT #21.

COPY

AN ORDINANCE GRANTING PERMISSION UNTO SOUTHERN POWER COMPANY TO CONSTRUCT AND MAINTAIN ITS LINES FOR THE TRANSMISSION OF ELECTRICITY ALONG, OVER, AND UNDER THE HIGHWAYS OF THE TOWN OF NEWBERRY, SOUTH CAROLINA, AND TO CONSTRUCT AND CARRY ON WITHIN SAID TOWN OF NEWBERRY THE BUSINESS AUTHORIZED BY AND UNDER THE TERMS OF THE CHARTER OF SAID SOUTHERN POWER COMPANY.

Be it ORDAINED by the Mayor and Aldermen of the town of Newberry, South Carolina, in Council assembled:

SECTION 1. That assent and permission be, and the same is hereby, given and granted unto SOUTHERN POWER COMPANY, its successors, lessees, and assigns,

(345) to lay, plant, extend, construct, build, erect, maintain, repair, and remove its lines, poles, wires, appliances, conductors, fixtures, and other appurtenances for the conducting, conveying, and the transmission of power by electricity upon, along, over, and under any and all highways, roads, streets, avenues, sidewalks, alleys, lanes, bridges, and other public places within and near the Town of Newberry, and to do all necessary acts for the purposes; and assent and permission is hereby given and granted unto said SOUTHERN POWER COMPANY to conduct, carry on, transact, and do within and near said Town of Newberry any and all business, and exercise all rights and privileges which the said SOUTHERN POWER COMPANY, under and by the terms of its charter, or otherwise, is authorized, empowered, or permitted to conduct, carry on, exercise, do, or transact, including among other powers, privileges, and rights, the right, power and privilege to use, lease, sell, convey, and transmit power by electricity for manufacturing, lighting, heating, motive power, or other purpose or purposes.

SECTION 5. This Ordinance is passed and the foregoing rights, powers and privileges are hereby granted and given unto Southern Power Company, its successors, lessees, and assigns, upon the distinct understanding and condition that said Southern Power Company, its successors, lessees, and assigns, shall not sell or furnish electricity for lighting purposes within the Town of Newberry, either to consumers direct, or to any third person, firm, or corporation for the purposes of resale or distribution, except that Southern Power Company may sell and furnish electricity for lighting purposes to the Commissioners of Public Works of the Town of Newberry, for the use of the said town, PROVIDED, however, that Consumers of power in amounts of One Hundred (100) horsepower, or more, may use such portion thereof as is necessary for lighting its or their manufacturing plants and premises.

SECTION 6. This ordinance and the rights and privileges herein granted shall remain and continue in effect for the term of sixty (60) years from the date hereof.

DONE AND RATIFIED IN TOWN COUNCIL,

(346) UNDER THE CORPORATE SEAL OF THE TOWN OF NEWBERRY, ON THE 8 DAY OF MARCH, A. D. 1911.

(S) J. J. LANGFORD,
Mayor.

Attest:

(S) J. R. SENNY,
Clerk & Treasurer of the
Town of Newberry, S. C.

PLAINTIFFS' EXHIBIT #22.

AN ORDINANCE

Granting the Reedy River Power Co., the right to do business in the City of Laurens. Be it ordained by the City Council of the City of Laurens:

Section One. That Reedy River Power Company is hereby granted the right to carry on and conduct the business authorized by its charter within the corporate limits of the City of Laurens, and may sell, lease and supply electric power to individuals, firms or corporations, provided, that this ordinance shall not be construed as an exemption to said corporation from any taxes or licenses, which may be lawfully imposed.

Section Four. The rights and franchise granted to said Corporation are hereby vested in it, its successors and assigns perpetually.

Done and ratified by the City Council of Laurens in Council assembled this, the twenty-seventh day of June 1906.

W. R. RICHEY, Mayor.

(L. S.)

L. G. BALLE, CITY CLERK.

(347) **PLAINTIFFS' EXHIBIT 23.**

COPY

State of South Carolina,
County of Laurens,
City of Laurens.

AN ORDINANCE RELATING TO THE STREETS AND HIGHWAYS OF THE CITY AND THE BUSINESS OF THE SULLIVAN POWER COMPANY.

Be it ordained by the City Council of the City of Laurens, in council assembled, and by the authority of the same, that from and after the passage and adoption of this ordinance, Sullivan Power Company, a corporation created and existing under the laws of the State of South Carolina be, and the same is hereby given full power and authority to carry on and conduct its business, authorized and provided for in its charter, within the corporate limits of the City of Laurens:

Done, approved, ratified and adopted by the said Council of the City of Laurens in session assembled and by the authority of the same and the seal of the City of Laurens hereto affixed this the 11th day of Mch A. D. 1913.

(s) C. M. BOGG,
Mayor of the City of Laurens.

Attest:

J. A. ROLAND,
Clerk of the City Council
of the City of Laurens.

This is a true copy of the original ordinance. 5 January 1928.

W. J. SIMPSON,
City Clerk.

(348) PLAINTIFFS' EXHIBIT #25.

SEABOARD AIR LINE RAILWAY

PRELIMINARY ESTIMATE

Proposed Saluda River Valley Crossing, South Carolina (including Cove or Cane Creek) therewith, involving a new railroad location, and including track, bridges, etc., required on account of water proposed to be impounded and backed up on the property and tracks of the Seaboard Air Line Railway. Distance affected is approximately 1.8 miles of railroad. Estimate is based on embankment slope of 2½ horizontal to one vertical. Approximate location is between Seaboard Air Line Railway mile post 413.8 to 415.6 northeast of Greenwood, S. C. (This study is based on elevation for top of proposed gates 440 at dam site).

Graduation work	$ 97,500.00
Jetting the fills	4,650.00
Riprap stone for protection, including delivery and placing	55,610.00
Culvert drainage pipes	3,600.00
Right of way	1,125.00
Clearing and grubbing	2,000.00
Making required railroad connections	1,000.00
Engineering and contingencies on above	15,470.00
Track laying and surfacing	32,054.00
Steel girder bridge in place (Saluda River & Cove Creek—1000')	128,325.00
Telegraph wire work and reconstruction	4,000.00
Total Preliminary Estimate (excluding interest and equipment charges)	$345,334.00

Notes:

A—To the above must be added, as a cost to the railway, the additional maintenance, etc., required over a period of years.

(349) B—The embankment slopes are figured on rate of 2½ to 1. If further facts develop a flatter slope is required, the same must be added.

C—The width of bridge openings have been taken at approximately 1000 feet. If further study requires larger openings, it must be added to above preliminary figure.

Office of Chief Engineer,
Seaboard Air Line Railway,
Norfolk, Va., June 8, 1935.
C. E. File 33630.

PLAINTIFFS' EXHIBIT #26.

COPY

FINANCE BOARD FOR GREENWOOD COUNTY

Greenwood, S. C.
November 10, 1933.

Chief Engineer
Seaboard Air Line Railroad Co.,
Norfolk, Va.

Dear Sir:

The county of Greenwood, S. C., proposes to construct a hydro-electric plant and lake on Saluda River, about 10 miles below your railroad bridge across Saluda River on the line between Greenwood and Clinton.

We plan to develop either 60 or a 65 foot effective head hydro-electric plant. Should the 60 foot plant be built it will be necessary to raise the Seaboard Railway bridge at the main span 6.36 feet in order to gain a 4 foot clearance beneath the bottom cord. Should the 65 foot plant be developed it will be necessary to raise the bridge 11.36 feet.

We would greatly appreciate your giving us estimates of cost covering the two cases just mentioned. We would appreciate it very much if you could give us some approximate figures to use in our preliminary esti-

(350) mate which we hope to send off to Washington the latter part of next week.

Yours very truly,

(S) D. T. DUNCAN,
Engineer in Charge.

(412) **DEFENDANTS' EXHIBIT 27.**

COPY

Norfolk, Va.

November 17, 1933.

33630-B

Dr. D. T. Duncan,
Engineer in Charge,
Finance Board for Greenwood County,
Greenwood, S. C.

Dear Sir:

Replying to yours November 10th, the question you ask about the cost of raising our Saluda River bridge and adjoining track, to a height of either 6.36 feet or 11.36 feet involves a great deal of work. If we raise the bridge we would necessarily have to raise the track adjoining the bridge, and to give a close estimate of this would require a survey, which, of course, I have not had time to make. However, after studying our records, I have made an approximate estimate. To raise the track 6.36 feet would involve about 2700 lineal feet of track, and would cost about $60,100.00. To raise it 11.36 feet would involve about 3500 lineal feet of track and would cost about $81,700.00.

It is possible that a survey would enable me to somewhat lower these figures, but this is by no means certain. While the figures are approximate, I believe them to be reasonably close to the correct amount.

(351) Trusting this information will serve your purpose, I am,

Yours very truly,

(S) W. D. FAUCETTE,
Chief Engineer.

bc Mr. W. L. Stanley,
Mr. E. C. Bagwell.
With copy of Mr. Duncan's letter.

PLAINTIFFS' EXHIBIT #28.

COPY

FINANCE BOARD FOR GREENWOOD COUNTY

Greenwood, S. C.
February 12, 1934.

Mr. W. D. Faucette, Chief Engineer,
Seaboard Air Line Railway,
Norfolk, Va.

Dear Sir:

Please refer to your letter to me under date of November 17, 1933, file 33630-B.

Greenwood County made application to the Federal Power Commission at Washington for a license to construct a dam on the Saluda River for the purpose of building a municipal hydro-electric power plant. This dam would have developed a head of 60 feet requiring the raising of your bridge across the Saluda River 6.36 feet to give a clearance of 4 feet between the high water of the lake and the bottom of your bottom chord. We have just received a telegram from the Federal Power Commission at Washington questioning the propriety of building a dam with an effective head of 60 feet, and requesting that we develop the 75 foot head at this location in order not to destroy any of the natural resources of the country. They further request that we take the matter up with you and ask that you make an estimate for them of the cost of raising your bridge sufficiently and we find that the necessary raise for the same clearance of four feet will be 21.36 feet.

In looking over some of the contour maps which we

(352) have at hand, we find that this will affect not only your Saluda River crossing, but approximately 6000 linear feet of your track at the Cove Creek crossing appears to lie below our high water mark. Of course, I have no profile of your tracks and do not know the elevations of your track and trestle at Cove Creek which creek lies about one mile north of the Saluda River along your track. The fill at this point might be high enough to clear the high water although the location on my plan rests within our high water mark.

I would appreciate it very much if you would send me a profile of your track commencing 1/2 mile south of Saluda River and running two miles north from that point.

I would like your opinion on a few questions concerning the matter:

Would it be practical to raise this trestle much under traffic?

Could your trains be routed over the C. & W. C. to Laurens and back to Clinton on the CN&L?

The District Engineer's office at Charleston made an approximate estimate of raising this bridge the amount now in question about four years ago. I have wondered if they took the matter up with you and if you gave them the figures which they used. I believe they proposed relocating your line and the part of their estimate which I have, read as follows:

SAL one mile relocation	$ 50,000.00
Two bridges	215,000.00
Total	$265,000.00

This estimate by them no doubt was made up if they went into the matter that deeply, using common labor at 25 cents per hour and skilled labor at about 40 cents per hour while any estimates which we made at present will have to count on P. W. A. labor prices, that is 40 cents per hour for common labor and $1.00 per hour for skilled labor.

I have just noticed that some of the maps show the creek in question as Cove Creek while others have it as Cane Creek. I do not know which is correct.

It looks as if this project will go through either for

(353) the 60 foot head or the 75 foot head and your co-operation in the matter of preparing these estimates will be greatly appreciated both by us and the Federal Power Commission.

Yours very truly,

(S) DANIEL T. DUNCAN,
Engineer for Greenwood County.

PLAINTIFFS' EXHIBIT #29.

COPY

Norfolk, Va.
February 21, 1934.
33630-B

Mr. Daniel F. Duncan,
Engineer for Greenwood County,
Greenwood, South Carolina.

Dear Sir:

Replying to your letter of February 12th, with reference to hydro-electric plant on the Saluda River, and consequent raising of our track and bridge, if such were done. I understand from your letter that the project now is to build a dam sufficiently high to get a 75 foot head. If this is done and our track is retained on its present alignment, such a project would affect over two miles of line, and the maximum raise of the track will be around thirty five, forty or more feet. I am not able to give you even an approximate figure on this without making a survey, and in any event, I believe that very likely through a survey we can obtain an alignment on some higher grounds where the expense of making the change might be reduced.

I do not gather from your letter that this matter is yet definite, so that I hesitate to undertake a survey. If at any time you can give me some reasonable assurance that the project will be undertaken, I shall be glad to make a survey and determine the most economical method to fit such a project, the cost of such survey, of course, to be considered a part of the expense of making the change, and we reimbursed for same. Such willingness on our

(354) part to make a survey is not to be construed as favoring or approving such a plan. To alter mainline of railroad with all the facts involved and protected, is quite an undertaking.

Complying with your request, I am enclosing herewith a blueprint of part of our profile A-[illegible]-613, which shows profile of our track each side of Saluda River. This print should, of course, be treated as confidential information.

You of course understand that nothing in this letter can in any way bind the Receivers or the Seaboard to any action. Before anything can be undertaken, or any engagements made, the matter must be handled through our General Manager's office and due authority obtained.

Yours truly,

(S) W. D. FAUCETTE,
Chief Engineer.

bc Mr. E. C. Bagwell
Mr. J. L. Kirby

PLAINTIFFS' EXHIBIT #30.

COPY

DANIEL T. DUNCAN

Civil Engineer

Greenwood, S. C.
July 4, 1934.

Mr. W. D. Fausette, Chief Engineer,
Seaboard Air Line Railroad,
Norfolk, Va.

Dear Sir:

I wrote you under date of November 10, 1933, to which you replied on November 17, 1933, giving me an estimate of cost of raising your Saluda River bridge and adjoining track to the height of 6.36 feet above its present elevation. The P. W. A. has acted favorably on our project to date, and in checking over our estimate a little

(355) closer, it appears that we might have overlooked the fact that your track crosses a creek approximately 6000 feet north of Saluda River and that there is a possibility that your track at the crossing of this creek will have to be elevated also. I have no profile of your track, but by raising your Saluda River bridge 6.3 feet you would then have a clearance between your bottom chord and the lake level of four feet. With this information would you please be so kind as to apply it on your profile of the creek in question and the adjacent track and give me an approximate estimate of cost of raising the track at this creek crossing. I am assuming that you would need a four foot clearance between the water and the bottom chord of your trestle, if there is one, at this creek.

A reply by return mail will be greatly appreciated for we are to meet with the P. W. A. Power Review Board the first of next week and it is urgent that we have this information before that meeting.

Thanking you in advance for your consideration in this matter, I remain,

Yours very truly,

(S) D. T. DUNCAN,
Engineer in Charge.

PLAINTIFFS' EXHIBIT #31.

COPY

Norfolk, Va.
July 10, 1934.
33630-A

Mr. Daniel T. Duncan, Engineer in Charge,
(Chief Engineer—Finance Board—Greenwood County, S. C.)
Greenwood, South Carolina.

Dear Mr. Duncan:

I have your letter of July 4th, writing about proposed

(356) power project in the Saluda River-Cane Creek district on our line near Greenwood. Since your letter was received, you called on the 6th instant, and asked for a profile which I have given you, and which I think is sufficiently accurate to show you the general relationship of the Saluda River and Cane Creek.

As I explained to you that day, we are very glad to furnish you these profiles, and in doing so, it is not to be taken that we have gone into or concurred any plans affecting our railroad, or entered into any agreement regarding such plans. If our management should after all knowledge of the details and after receipt of application from proper authority, enter into any agreement, it would have to be protective of all of our facilities and property involved, free of any cost to the railway. The alteration or raising of the main line of a railroad is a major undertaking, and as I explained to you, any plan would have to be submitted in detail and approved by our management before we could go into the question of passing on any details affecting our railroad and property. You appreciate that this is an important part of our main line.

With kind regards, I am

Very truly yours,

(s) W. D. FAUCETTE,
Chief Engineer.

PLAINTIFFS' EXHIBIT #32.

COPY

Norfolk, Va.
January 22, 1935.

Mr. Daniel T. Duncan, Engineer in Charge,
(Chief Engineer—Finance Board—Greenwood County, S. C.)
Greenwood, South Carolina.

Dear Mr. Duncan:

Referring to our exchange of letters and conferences with respect to the Buzzards Roost power project:

(357) While we have previously indicated inability in the absence of definite plans and profiles to give an accurate estimate of the cost of revising the grade line of the Seaboard Air Line Railway, we wish now to clarify the situation as far as possible.

We have recently had Dr. Riddick of Raleigh, N. C., make a study of this project in respect to its effect on our railroad. Dr. Riddick called on you recently in Greenwood and discussed certain phases of the matter with you. Based on the information furnished us by Dr. Riddick, and what we believe to be the general plans of your project and the elevation of the water you expect to put where the Seaboard tracks now exist in the flooded area, we have made certain rough estimates and now wish to advise you that in our opinion, the cost of protecting the Seaboard's situation and providing a new line safe and satisfactory for our operations and maintenance, including the necessary bridges, waterways, etc., satisfactory to us, will be in excess of $325,000.

You appreciate of course that no surveys have been run by us and while actual surveys and correct plans and profiles may change this estimate, we believe this is accurate enough for the needs of the moment and I think you should have the best information available at this time.

I am sorry we could not give you an estimate sooner and I know you understand that estimating under such conditions is rather difficult.

Yours very truly,

(s) W. D. FAUCETTE,
Chief Engineer.

(358) **PLAINTIFFS' EXHIBIT #33.**

COPY

FINANCE BOARD FOR GREENWOOD COUNTY

Greenwood, S. C.
January 30, 1935.

Mr. W. D. Faucette, Chief Engineer,
Seaboard Air Line Railway,
Norfolk, Va.

Dear Sir:

I wish to acknowledge your letter of January 22, 1935.

The figure of $325,000 although it includes the Cane Creek crossing, is such an immense increase over your former approximate estimate of November 17, 1933 that we are forced to request some details to compare with our figures.

Would you be kind enough to split the figure of $325,000 (or more) between the Cane Creek crossing and the Saluda River crossing co ts?

We have a detailed estimate of cost covering the Cane Creek crossing which we made up.

In making up your figure of $325,000 what did you propose to do as to changes and alterations at both Cane Creek and Saluda River?

With kind personal regards, I am

Yours very truly,

(s) D. T. DUNCAN,
Engineer.

(359) **PLAINTIFFS' EXHIBIT #34.**

COPY

Norfolk, Va.
Feb. 5, 1935.
33630-A

Mr. Daniel T. Duncan, Engineer,
Finance Board for Greenwood County,
Greenwood, S. C.

Dear Mr. Duncan:

I have your letter of January 30, in connection with the rough estimate of the cost of protecting the Seaboard situation and providing a new railroad line, safe and satisfactory for our operations and maintenance, across the Saluda River valley and Cane (or Cove) Creek territory. As advised you in my letter of January 22, you appreciate that no detail surveys have been made by us and while final actual surveys and ultimate plans and profiles may change this estimate, the approximate figures I had reference to, based on information obtained from Dr. Riddick's report, making up the $325,000 or more, are quoted below:

Grading	$105,000.00
Riprap Stone	21,937.50
Labor placing riprap	32,500.00
Culvert pipe in place	3,680.00
Right of Way	1,125.00
Clearing and Grubbing	750.00
Making track connections at ends, wire service, etc.	2,000.00
Engineering and contingencies	16,699.50
Track laying and surfacing and ballast	31,372.00
Steel bridge work	128,325.00
Total, exclusive of interest during construction and hire equipment, etc.	$343,389.00

(360) Any higher labor rates required by the Public Works Administration or others, will increase the above figures.

With consideration of the local situation, and the height to which the final track elevation would have to be located, the proper and practicable way to treat this situation is to build an independent new line across the valley, which you are going to flood with your proposed project. As you can readily see, the length of such a line will be something over one and seven-tenths (1-7/10s) miles, and in which would have to be the necessary grading and fills, with adequate slopes, riprapping, steel bridge structures at Saluda River and Cane, or Cove, Creek, track, necessary ballasting, drainage, etc. It must be obvious to you that for a project of this size, the idea of raising the track and structures, etc., on the existing alignment, is hazardous, would be very expensive, delay and tie up traffic, for such a length of time, and bring about a situation, making it clear that it is impracticable to do it, and further, we cannot perpetuate wooden structures in water, and a new line is the proper way to handle this situation.

If you have used any figures given you in my letter of November 17, 1933, as the final cost for Seaboard protection, they are, of course, totally inadequate. You realize that the project as outlined requires the building of a new railroad line, covering not only the Saluda River crossing, but Cane (or Cove) Creek Valley crossing as well, and requires a new line all the way across, with proper bridges, riprapping, etc., satisfactory to us, as indicated above, and in this connection, I attract your attention to my letters to you of February 21, 1934 and July 10, 1934, that we had not reached any final understanding with you in regard to our requirements. For ready reference, I attach copies of these two letters.

The above is the best information I have available at this time, and I think sufficiently close for the general purposes of this letter, but for the reasons stated, the figures are subject to such changes as may be rendered necessary by a final survey and estimate. It is certain, howver, that the cost must, in the light of present information, necessarily be several times any such figure as $60,000 or $70,000.

(361) With kind regards, I am

Yours very truly,

(s) W. D. FAUCETTE,
Chief Engineer.

PLAINTIFFS' EXHIBIT #35.

P. W. 19325

FEDERAL EMERGENCY ADMINISTRATION
OF PUBLIC WORKS

PWA PRESS SECTION Release No. 989

IMMEDIATE RELEASE

Achievement in certain instances of the administration purpose of making electric energy more widely available at cheaper rates today lead to a clarification of the policy on power by the Public Works Administration.

Municipal or local publically owned power projects will be aided by PWA only when, in addition to meeting those qualifications necessary for public works projects, they assure electricity to communities at rates substantially lower than otherwise obtainable under the unchanged basic policy enunciated by Public Works Administrator Ickes.

The statement of Administrator Ickes followed action by some privately owned utilities, which, on re-examination of their condition, found it possible to reduce rates to a point below those proposed by municipal project plants.

In all allotments made for municipal power plants by the Public Works Administration proposed rates have been well below existing private company rates. Consequently, the fact that the companies in some instances have met these proposed municipal rates has been deemed as showing progress toward one of the dams of this phase of the public works program.

(362) In the cases affected Public Works Administration policy will be so administered that municipal plant construction will not be deprived of the possibility of public works support until such time as the local Government feels assured the proposed rate reduction by the existing utility will be in effect on a reasonably permanent basis.

Since the public works program began financing electric plants, where they are socially desirable and where they will be self-liquidating, there has been reductions of rates by private utilities in different localities. The private utilities are becoming increasingly cognizant of the greater use of power resulting from lower rates.

Administrator Ickes said:

"PWA has endeavored to make electric energy more broadly available at cheaper rates by acting on applications of municipalities for loans and grants to finance municipal systems where reasonable security is offered and the project is socially desirable. They are deemed desirable where the loan can be amortized in a reasonable period while charging rates substantially lower than those of the existing utility.

"However, we make it a practice before approving the loan to give the company an opportunity to put in effect rates at least as low as those at which the municipal system will be self-liquidating. Several utility companies have accepted this opportunity. It is obvious that in such cases it is advantageous to the city and to PWA that the offer be accepted and the applications withdrawn. To make loans and grants to finance projects where the competitor offers rates which are lower than those possible by the city plant, would duplicate facilities without any social betterment and impose on the city a burden which it probably could not meet without resort to taxation.

"Furthermore, in the described situation Public Works will be free to use its funds to better advantage elsewhere. The action of the utility companies referred to supports the belief that domestic rates, in certain in-

(363) stances at least, are so high as to be disadvantageous to the company as well as unjust to the consumers. Experience shows that lower rates may produce larger profits particularly where promotional campaigns are conducted and the cost of electrical appliances is made reasonable.

"PWA will cooperate with cities to prevent rates rising on an indication municipal plants may not be built. PWA will not rescind allotments or suggest the withdrawal of applications until the lowered rates are legally in effect.

"State laws authorize municipal competition, hence it is PWA's position that the State has determined that such competition may be socially desirable. We believe it is for the municipal applicant to determine whether or not it desires to compete with privately owned utilities. It is our policy to consider such applications particularly where franchises are soon to expire, provided the project is self-liquidating at rates lower than those which the existing utility is willing to put into effect."

PLAINTIFFS' EXHIBIT #36.

The material parts of plaintiffs' exhibit #36 are as follows, to-wit:

Circular No. 1

THE PURPOSES, POLICIES, FUNCTIONING, AND ORGANIZATION OF THE EMERGENCY ADMINISTRATION—THE RULES PRESCRIBED BY THE PRESIDENT.

Article I

Circular No. 1 states the purposes of the National Industrial Recovery Act (title II, Public Works), and the purposes, policies, functioning, and organization of the Emergency Administration of Public Works, created by the President to effectuate title II.

It also states the rules and regulations prescribed by

(364) the President pursuant to section 209, as necessary to carry out the purposes of the title. These rules and regulations control all contracts let for construction of public works, financed under the act, whether Federal or non-Federal, and all loans and grants pursuant to title II. Any violation of any such rule or regulation is punishable by fine not to exceed $500 or imprisonment not to exceed 6 months, or both.

SECTION 1. Purposes of title II of the act.—(1) The Comprehensive program of public works. The act (sec. 201) provides that the Administrator, under the direction of the President, shall prepare a "comprehensive program of public works." The comprehensive program is to be related to the reconstruction legislation of which the Recovery Act is a part. The purpose underlying the entire scheme is, as stated in the declaration of policy of the Recovery Act, "to increase the consumption of industrial and agricultural products by increasing purchasing power, to reduce and relieve unemployment, to improve standards of labor, and otherwise to rehabilitate industry and to conserve natural resources."

The formulation of a comprehensive plan of public works thus requires consideration of the functioning of the national economy as a whole. This in turn involves consideration of ascertained trends of population and industry, its centralization and decentralization, changes in the habits of the people caused by the substitution of the machine for human labor, the automobile, changes in railroad rates, in charges for electric current, the effect of massive projects like Boulder Dam, Tennessee Valley, and the St. Lawrence River improvement.

The formulation of the immediate comprehensive plan (which is necessary to provide employment quickly) involves the formulation of a long-range national plan to follow and be consistent with the immediate plan. To that end the President has directed the creation of a long-range planning board more particularly described later.

Obviously the purpose of the act to provide employment quickly cannot await the complete formulation of

(365) the comprehensive program. But it is possible to select projects which will be consistent with such program when formulated. The President and the Emergency Administration under his direction will not await complete formulation, but, "with a view to increasing employment quickly, while reasonably securing any loan made by the Administrator", will aid in the construction and financing of any public works project deemed worthy of inclusion (sec. 203).

The policies adopted by the Administrator, by the authority of the President, hereinafter set forth, are designed to provide an immediate program, Federal and local.

SECTION 4. President's power to make grants to public bodies.

The act throughout is permissive only. The President may exercise all, any, or none of the powers it invests in him.

The Administrator, with the approval of the President, has adopted policies to control the administration of the act.

ARTICLE II. POLICIES OF THE EMERGENCY ADMINISTRATION OF PUBLIC WORKS

SECTION 6. Tests for eligibility of projects.

The Administrator, the State advisory board and the State engineer (P. W. A.) will apply the following tests in determining the eligibility of each project submitted:

(1) The relation of the particular project to coordinated planning, and its social desirability.

Note: No project will be considered which is a mere makeshift to supply work. No non-Federal project will be considered which will require for its maintenance or operation an additional outlay by the Federal Government.

(366) The Administrator and the State board will consider ascertained trends as to changes in population, industries, and other social and economic factors. (See Art. III, sec. 2.)

(1) Economic desirability of the project; i. e., its relation to unemployment and revival of industry.

(3) The soundness of the project from an engineering and technical standpoint.

(4) The financial ability of the applicant to complete the work and to reasonably secure any loans made by the United States.

(5) The legal enforceabiltiy of the securities to be purchased by the United States or of any lease to be entered into between the applicant and the United States.

SECTION 7. Preferences.—(1) Projects integrated with and consistent with a State plan are to be preferred to the isolated or inconsistent. (2) Projects which can be started promptly are to be preferred to those requiring delay. (3) Projects near centers of unemployment are to be preferred.

SECTION 8. Tests for the grant to public bodies. —The President is empowered to make grants, to States, municipalities, or other public bodies, for the construction, repair, or improvement of any project approved by him, not in excess of 30 per cent of the cost of the labor and materials employed upon such project. The terms are to be such as the President shall prescribe.

The President has prescribed and the Administrator will apply the following test to enable him to determine whether to make the grant, and if so, to what extent: The social and economic significance of the project and its relative importance in the comprehensive national program of public works contemplated by the act, and the extent its construction will provide employment and purchasing power in the vicinity.

(367) The following classes of projects will be preferred as to the grant:

(1) Waterworks projects not unduly burdening the community with debt and necessary for its health and convenience; (2) sewer projects of the same character; (3) sewage-disposal projects sufficiently comprehensive to render a river or lake system, used by many communities, safe as a water supply, and other sewage-disposal projects; (4) other projects, which, like the foregoing, are regenerative, i. e., tend to stimulate further projects, such as highways, bridges, and tunnels, opening of new territory for homes and industry, projects for the transmission of electrical energy into territories not now served. The President, in determining whether to allow or withhold the grant, will also consider to what extent the budget of the applicant is balanced or in process of balancing and will prefer those public bodies which put their finances in order.

The grant will not be allowed unless the public body either (a) has power to sell to the United States its bonds in sufficient amount to reimburse the United States for its outlay (less the grant if allowed) in connection with the project and enters into a contract so to do and to complete the project, or (b) has power to convey the site of the project to the United States and contracts so to do, and to pay rental sufficient to reimburse the United States for its outlay less the grant if allowed, and to complete the project, or (c) is in process of securing the necessary powers and the Administrator is convinced that such powers will be obtained, or (d) in special cases as the President may determine.

ARTICLE IV. THE STATE ADVISORY BOARDS AND STATE ENGINEER (P. W. A.)

SECTION 4. The immediate program.

The immediate program shall include only such projects as (1) can be started within 30 days; (2) are safe and sufficient from an engineering standpoint; (3) are necessary and convenient from a social standpoint; (4) the applicant has a balanced budget, is in process of bal-

(368) ancing it, or action toward such balancing is in good faith assured.

(It is agreed that on the appeal either party may refer to and use any part of this document, and that, if deemed necessary, the original exhibit shall be transmitted by the Clerk of the United States District Court to the Circuit Court of Appeals.)

PLAINTIFFS' EXHIBIT #38.

FEDERAL EMERGENCY ADMINISTRATION OF PUBLIC WORKS

Washington, D. C.

RESOLUTION OF SPECIAL BOARD FOR PUBLIC WORKS

RE: GREENWOOD COUNTY, SOUTH CAROLINA

WHEREAS, by resolution dated June 20, 1934, the Administrator and this Board included in the comprehensive program a certain project of Greenwood County, South Carolina, for the construction of a hydro-electric plant and allotted a sum not to exceed $2,767,000 for the purpose of aiding by way of loan and grant, the financing of said project:

WHEREAS, by resolution dated June 27, 1934, said resolution was reconsidered:

WHEREAS the Acting Deputy Administrator recommends that said allotment be increased in the amount of $85,000 by reason of certain necessary changes in plans and specifications:

RESOLVED, that the Administrator and the Special Board include in the comprehensive program a project for the construction of a hydro-electric plant, comprising an earthen dam across the Saluda River, a 15,000 KW generating station with necessary control equipment, transmission lines and rural distribution, substan-

(369) tially in accord with Docket 3972, and allot a sum of not to exceed $2,852,000 for the purpose of aiding by way of loan and grant, the financing of such project, subject to the execution of a contract, satisfactory to the Administrator, between the United States of America and Greenwood County, South Carolina.

Board approval November 7, 1934 3972
Presidental approval November 8, 1934

PLAINTIFFS' EXHIBIT #38.

FEDERAL EMERGENCY ADMINISTRATION OF PUBLIC WORKS

Washington, D. C.

RESOLUTION OF SPECIAL BOARD FOR PUBLIC WORKS

RE: GREENWOOD COUNTY, SOUTH CAROLINA

Resolved that the Administrator and the Special Board include in the comprehensive program a project for the construction of a hydro-electric plant comprising an earthen dam across the Saluda River, a 15,000-kw generating station with necessary control equipment and approximately 90 miles of high and low tension distribution lines, by "Greenwood County", South Carolina, substantially in accord with Docket No. 3972, and allot a sum not to exceed $2,767,000, for the purpose of aiding by way of a loan and grant, the financing of such project, subject to the execution of a contract satisfactory to the Administrator between the United States of America and "Greenwood County".

Board Approval 6/20/34
Presidential Approval 6/27/34

3972

(370) NON FEDERAL PUBLIC WORKS

That are Deemed Desirable

List No. 92

(Old "200" List)

Recommended by

THE SPECIAL BOARD FOR PUBLIC WORKS

Confidential

June 20, 1934.

* * *

3972 Greenwood Co., S. C. Electric Plant 2,767,000 L&G
F.D.R.

* * *

NON FEDERAL PUBLIC WORKS

That are Deemed Desirable

List No. 158
AMENDATORIES, RESCISSIONS, and SPECIALS

Recommended by

THE SPECIAL BOARD FOR PUBLIC WORKS

Confidential

November 7, 1934.

* * *

3972 Greenwood Co. S. C. Hydro-Elec. plant 85,000 L&G
(Amendatory) F.D.R.

(371) **EXHIBIT #41.**

POWER CONTRACT BETWEEN GREENWOOD COUNTY BY ITS FINANCE BOARD AND THE CITY OF NEWBERRY.

This contract is conditional upon the approval of a loan by and from the Government of the United States, and complete approval by the Public Works Administration of the agreements herein.

This agreement, made and entered into this 18 day of June, 1934, pursuant to Revenue Bond Act, approved May 8, 1933, (Statutes of 1933 page 411), passed by the Legislature of the State of South Carolina and other laws permitting the construction of municipal power plants, between Greenwood County represented by Greenwood County Finance Board, hereinafter called the "Power Plant", and its successors and assigns and the City of Newberry, South Carolina, hereinafter called "The City".

NOW, THEREFORE, For and in consideration of the mutual covenants herein contained, the parties hereto mutually covenant and agree as follows:

1. TERM OF CONTRACT: This contract shall become operative upon the completion of the proposed hydro-electric project and when sufficient water has been impounded to supply adequate power, all of which is expected to come to pass in the year 1936, and shall continue in effect for a period of not less than five years from that time.

2. POWER SUPPLY: The Power Plant will during the term hereof supply electric energy to the city for distribution or sale. The City agrees to purchase and the Power Plant to supply a minimum of 1,000,000 kilowatt hours primary power per year. The word primary, as herein used, means power that is furnished continuously and not interrupted on account of lack of water supply. In addition to the specified minimum, The City agrees to purchase and the Power Plant agrees to supply The City's power requirements up to a maxi-

(372) mum of 3,600,000 kilowatt hours per year. The Power Plant agrees to furnish additional energy at the same rate above 3,600,000 kilowatt hours a year if it has this additional energy available. Said energy at approximately 60 cycles per second and approximately 2300 volts.

3. POWER RATE: The City agrees to pay the Power Plant not later than the 15th of each month for all power consumed during the preceding calendar month at a uniform rate of seven and one-half mills ($0.0075) per kilowatt hour measured by meters on the low tension side of the main step down transformers located at the City of Newberry.

4. GENERAL PROVISIONS: The Power Plant will furnish energy as agreed upon *continuously* so far as reasonable diligence and n odern equipment will permit, and agrees not to sell or contract to sell primary power in excess of the primary power which would be available under similar stream flow conditions as prevailed during the dry period of 1925-1926 as indicated by Government records from the stream gaging station at Chapells, from the proposed power plant as contemplated or may be enlarged. The Power Plant further agrees to construct and maintain a loop or double transmission line on remote lines of poles to The City from Buzzards Roost Power Plant. This power line will be built of the most modern lightning-proof equipment which it is practical to use. The Power Plant will also install satisfactory voltage regulators at the City of Newberry.

5. The City of Newberry depends solely upon electrical energy for pumping water for domestic and other consumption and fire prevention. This being an absolute necessary, it is understood and agreed for these reasons that in case of partial failure of power supply or in any event where some customers will of necessity have to be cut off from the power supply that the needs of the City of Newberry will have precedence.

6. Negotiations are now under way to procure the use of a local steam auxiliary for standby purposes at the City of Newberry. It is agreed that honest and continued efforts will be made to bring this arrangement to a satisfactory conclusion.

(373) 7. This contract is contingent upon Greenwood County, S. C., sharing ownership and profits from Buzzard Roost Power project on Saluda River with Newberry County, S. C., in proportion to electric power consumed in Newberry County, S. C.

IN WITNESS WHEREOF, The parties have hereunto signed their names the day and year first above written.

APPROVED:

HARRY W. LOMINICK,
Chairman Commissioners of Public Works.

THE CITY OF NEWBERRY,
By
Mayor

AS TO GREENWOOD COUNTY

D. T. DUNCAN
J. C. CORLEY

GREENWOOD COUNTY BY ITS FINANCE BOARD,
By E. L. BROOKS,
Chairman

E. I. DAVIS,
Secretary.

IN THE PRESENCE OF:

C. A. MAY
H. W. SCHUMPERT
AS TO CITY OF NEWBERRY

PLAINTIFFS' EXHIBIT #41.

POWER CONTRACT BETWEEN GRENDEL MILLS, PANOLA COTTON MILLS AND GREENWOOD COUNTY BY ITS FINANCE BOARD.

This contract is conditional upon its approval by the Public Works Administration and the approval of a loan by the P.W.A. for the construction of the proposed hydro-electric development.

This agreement entered into this 30 day of May, 1934, pursuant to Revenue Bond Act, approved May 8,

(374) 1933, (Statutes of 1933, page 411), passed by the Legislature of the State of South Carolina, and other laws permitting the construction of municipal power plants, between Greenwood County, represented by Greenwood County Finance Board, hereinafter called the "Power Plant" and its successors and assigns, and Panola Cotton Mills and Grendel Mills, private corporations doing business in the County of Greenwood, South Carolina, hereinafter called "Cotton Mills",

NOW, THEREFORE, for and in consideration of the Mutual covenants herein contained, the parties hereto mutually covenant and agree as follows:

1. Term of Contract: This contract shall become operative upon the completion of the proposed hydro-electric project and when sufficient water has been impounded to supply adequate power, all of which is expected to come to pass during the year 1936 and shall continue in effect for a period of not less than five years.

2. Power Supply: The Power Plant will during the term hereof supply secondary electric power to cotton mills. The cotton mills agree to purchase and the Power Plant to supply the entire power requirements of the Cotton Mills with the following exceptions. Secondary power is defined as power available during normal and wet seasons of river flow but which is not available during seasons of low flow. The supply of power may be discontinued at the option of the Power Plant at intermittent periods at which times the Power Plant will give twenty-four hours notice to Cotton Mills to give them an opportunity to prepare to use their auxiliary sources of power.

3. Power Rate: All power consumed will be paid for at the uniform rate of five mills ($0.005) per kilowatt hour. Payment for energy used in any calendar month shall be due on the fifteen of the succeeding month.

4. Delivery of Power: The Power Plant will provide a transformer station at Panola Mill on the property of Panola Mill and deliver power at 2300 volts at this point for the use of both Panola and Grendel Mills.

(375) IN WITNESS WHEREOF, the parties have hereto signed their names the day and year first above written.

GREENWOOD COUNTY
BY FINANCE BOARD
FOR GREENWOOD
COUNTY,
By E. L. BROOKS,
Chairman.
E. I. DAVIS,
Secretary.

PANOLA COTTON
MILLS,
By L. E. FOSTER,
Gen. Supt. & Chairman
Bd. of Directors.

GRENDEL MILLS,
By L. E. FOSTER,
Gen. Supt.
Gen. Supt. & Chairman
Bd. of Directors.

IN THE PRESENCE OF:
D. T. DUNCAN
J. R. ABNEY.

PLAINTIFFS' EXHIBIT #41.

POWER CONTRACT BETWEEN GREENWOOD COUNTY MUNICIPAL POWER PLANT AND THE TOWN OF NINETY SIX, SOUTH CAROLINA

This contract is conditional, upon the approval of a loan by and from the Government of the United States, and complete approval by the Government of the agreements herein.

THIS AGREEMENT, made and entered into this day of , 193 , pursuant to Revenue Bond Act, #465 (299), approved May 8, 1933, passed by the Legislature of the State of South Carolina, and other laws permitting the construction of municipal power plants, between the Greenwood County Municipal Power Plant, hereinafter called the "Power Plant", and its successors and assigns and the Town of Ninety Six, South Carolina, incorporated under the laws of the State of South Carolina and lying within the limits of the Count yof Greenwood, South Carolina, hereinafter called the "Town".

(376) WHEREAS, the Power Plant is being constructed and operated for the mutual benefit of the County of Greenwood and its citizens to improve the living conditions in rural communities and the towns and is not organized or doing business for profit with the exception of any surplus which might be applied for the relief of taxation.

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained, the parties hereto mutually covenant and agree as follows:

1. TERM OF CONTRACT: This contract shall become operative upon the completion of the proposed hydro-electric project and when sufficient water has been impounded to supply adequate power, all of which is expected to come to pass in the year of 1936, and shall continue in effect until midnight January 1, 1957.

2. POWER SUPPLY: The Power Plant will during the term hereof, supply electric energy to the Town for the purpose of distribution and resale. The Town agrees to purchase, and the Power Plant to supply, the entire power requirements of the Town, except as herein specified. Said energy will be delivered in the form of three phases, alternating current at approximately 60 cycles per second and approximately 2300 volts. The maximum amount of electricity (called the reserve power) which the Power Plant agrees to supply is 500 K. V. A. but the Town may, upon securing the consent of the Power Plant, and in conformity with such additional or supplemental agreements as the parties may enter into, increase such maximum demand.

The Power Plant expects to supply under this agreement approximately five hundred thousand (500,000) kilowatt hours per year at an approximate uniform monthly rate of consumption. However, the Power Plant has the option of supplying any additional energy which the Town needs up to the full capacity of the hydro-electric plant and its auxiliaries as they now exist or may be increased.

3. POINT OF DELIVERY: The electric energy to be supplied to the Town hereunto shall be delivered at the

(377) outgoing side on main switch or switches on the low tension side of the main step-down transformer of a substation to be constructed, owned and maintained by the Power Plant. Location of this substation will be near the Ninety-Six Cotton Mill where the substation for serving the Cotton Mill will be located or some other place adjacent to the Town of Ninety-Six.

4. SCHEDULE OF RATES: Attached hereto and made a part hereof by reference, the same so incorporated herein, is a schedule of Rates. The Town agrees to pay for the energy supplied by the Power Plant at the rates fixed in Schedule which is entitled, "Greenwood County Municipal Power Plant wholesale Power Rates To Municipalities, Schedule A".

5. CONTRACT NOT TRANSFERABLE: Neither this contract nor any interest therein shall be transferred or assigned by the Town to any other party without the written consent of the Power Plant.

6. FAILURE TO MAKE PAYMENT: Payment for energy used during any calendar month shall be due on the 15th of each succeeding month. Upon failure of the Town to pay for the energy used for any calendar month within thirty days after the close of said month the Power Plant shall have the right to discontinue the supply of energy and refuse to resume delivery thereof so long as any part thereof remains unpaid. Discontinuance of supply under this Section will not relieve the Town of its liability for the agreed monthly payment during the time the supply of energy is so discontinued. To any amount remaining unpaid on the first day of the calendar month following the due date, there shall be added a penalty of one (1%) per cent and an additional one (1%) per cent shall be added on the first day of each succeeding month until the amount is paid in full.

INTERRUPTION OF SERVICE: The Power Plant will furnish energy as agreed upon continuously so far as reasonable diligence and modern equipment will permit, but the Power Plant, its officers, agents or employees shall not be liable for damages when, for any reason suspension of the operation of power systems of the Power Plant, or any part thereof, interfere with the delivery

(378) of electric energy to the Town, nor shall such interruption constitute a breach of this contract on the part of the Power Plant.

8. The Power Plant will have the right to serve direct industries within the limits of the Town of Ninety Six with demands in excess of 1000 K. V. A.

IN WITNESS WHEREOF, the parties have hereunto signed their names the day and year first above written.

GREENWOOD COUNTY MUNICIPAL POWER PLANT,

By _____

_____

_____

TOWN OF NINETY SIX,
By C. L. MOSELEY,
Chairman, Public Works Administration.

IN THE PRESENCE OF:

W. B. JETER. (Signed)

SCHEDULE A.

GREENWOOD COUNTY MUNICIPAL POWER PLANT

WHOLESALE POWER RATES TO MUNICIPALITIES

Wholesale Rate:

Demand Charge—$1.00 per K. W. per month.

Demand—Maximum integrated sixty (60) minutes period.

(379) Energy Charge:
First 100,000 Kilowatt Hours per month at 5. Mills per K. W. H.
Next 200,000 Kilowatt Hours per month at 4. Mills per K. W. H.
Over 300,000 Kilowatt Hours per month at 3. Mills per K. W. H.

In no case shall the energy charge plus the demand charge aggregate less than 7.0 Mills per K. W. H. for current consumed.

Minimum Monthly Bill:
$1.00 per K. W. per month, and in no case shall the minmium bill be less than the charge for sixty (60) per cent of the highest demand occurring during the previous consecutive twelve (12) month period.

Adjustments of Demand Charge:
(a) Demand charge may be adjusted if, and when, Power Plant deems necessary to correct for power factors lower than eighty-five (85%) per cent. Such adjustments will be made in such manner as to bring the demand charge to the equivalent of eighty-five (85%) per cent power factor.

PLAINTIFFS' EXHIBIT #41.

POWER CONTRACT BETWEEN GREENWOOD COUNTY BY ITS FINANCE BOARD AND THE LAURENS GLASS WORKS.

This contract is conditional upon the approval of a loan by and from the Government of the United States, and complete approval by the Public Works Administration of the agreements herein.

This agreement, made and entered into this 15th day of June, 1934, pursuant to Revenue Bond Act, approved May 8, 1933, (Statutes of 1933 page 411), passed by the Legislature of the State of South Carolina and other laws permitting the construction of municipal power plants, between Greenwood County represented by Greenwood County Finance Board, hereinafter called the "Power Plant", and its successors and assigns, and the

(380) Laurens Glass Works, a corporation doing business in the County of Laurens and State of South Carolina, hereinafter called the "Glass Works".

NOW, THEREFORE, For and in consideration of the mutual covenants herein contained, the parties hereto mutually covenant and agree as follows:

1. TERM OF CONTRACT. This contract shall become operative upon the completion of the proposed hydro-electric project and when sufficient water has been impounded to supply adequate power, all of which is expected to come to pass in the year 1936, and shall continue in effect for a period of not less than five years from that time.

2. POWER SUPPLY: The Power Plant will during the term hereof, supply electric energy to the Glass Works for consumption. The Glass Works agrees to purchase and the Power Plant to supply a minimum of 840,000 kilowatt hours primary power per year at an approximately average rate of consumption. The word primary as herein used, means power that is furnished continuously and not interrupted on account of lack of water supply. In addition to the specified minimum, the Glass Works agrees to purchase and the Power Plant agrees to supply The Glass Works' entire requirements up to a maximum of 1,400,000 kilowatt hours per year at an approximately average rate of consumption. The Power Plant agrees to furnish additional energy at the same rate above 1,400,000 kilowatt hours a year if it has this additional energy available. Said energy at approximately 60 cycles per second and approximately 2300 volts.

3. POWER RATE: The Glass Works agrees to pay the Power Plant not later than the 15th of each month for all power consumed during the preceding calendar month at the rates quoted in Schedule A as follows:

SCHEDULE A.

First	50,000 KWH	@	0.800¢
Next	50,000 KWH	@	0.775¢
Next	100,000 KWH	@	0.750¢
Next	100,000 KWH	@	0.725¢
Excess		@	0.700¢.

(381) The current will be measured by meters on the low tension side of the main step down transformers located at the Glass Works.

4. GENERAL PROVISIONS: The Power Plant will furnish energy as agreed upon *continuously* so far as reasonable diligence and modern equipment will permit, and agrees not to sell or contract to sell primary power in excess of the primary power which would be available under similar stream flow conditions as prevailed during the dry period of 1925-1926, as indicated by Government Records from the stream gaging station at Chappells, from the proposed power plant as contemplated or may be enlarged. The Power Plant further agrees to construct and maintain a loop or double transmission line to the Glass Works from Buzzards' Roost Power Plant. This power line will be built of the most modern lightning-proof equipment which it is practical to use.

5. Attached hereto and made a part of this agreement is an alternate form of contract. It is understood that this customer has the option of changing to this alternate form at any time before the delivery of power commences to The Laurens Glass Works.

IN WITNESS WHEREOF, The parties have hereunto signed their names the day and year first above written.

IN THE PRESENCE OF:
D. T. DUNCAN
L. M. ERWIN

LAURENS GLASS WORKS,
BY E. S. EASTERLEY,
President.

ATTEST: _____
Secretary.

GREENWOOD COUNTY BY ITS FINANCE BOARD,
By E. L. BROOKS,
Chairman.
E. I. DAVIS,
Secretary.

D. T. DUNCAN
D. B. SIZEMORE.

(382) **PLAINTIFFS' EXHIBIT #41.**

POWER CONTRACT BETWEEN GREENWOOD COUNTY MUNICIPAL POWER PLANT AND THE LAURENS GLASS WORKS

This contract is conditional upon the approval of a loan by and from the Government of the United States, and complete approval by the Government of the agreements herein.

This agreement, made and entered into this day of , 1934, pursuant to Revenue Bond Act #465 (299), approved May 8, 1933, and passed by the Legislature of the State of South Carolina, and other laws permitting the construction of municipal power plants, between Greenwood County Municipal Power Plant, hereinafter called the "Power Plant", and its successors and assigns, and the Laurens Glass Works, a private corporation doing business in the County of Laurens, South Carolina, hereinafter called the "Glass Works."

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained, the parties hereto mutually covenant and agreed as follows:

1. TERM OF CONTRACT: This contract shall become operative upon the completion of the proposed hydro-electric project and when sufficient water has been impounded to supply adequate power, all of which is expected to come to pass in the year of 1936, and shall continue for a period of five years from that date.

2. POWER SUPPLY: The Power Plant will during the term hereof supply electric energy to the Glass Works for the purpose of operating machinery and other pertinent necessities. The Glass Works agrees to purchase and the Power Plant to supply the entire power requirements of the Glass Works except as herein specified. Said energy will be delivered in the form of three phase alternating current at approximately 60 cycles per second and approximately 2300 volts. The maximum amount of electricity (called the reserve power) which the Power Plant agrees to supply is 500 K. V. A., but the Glass Works may, upon securing the consent of

(383) the Power Plant, and in conformity with such additional or supplemental agreements as the parties may enter into, increase such maximum demand.

The Power Plant expects to supply under this agreement approximately one million four hundred thousand (1,400,000) kilowatt hours per year. However, the Power Plant has the option of supplying any additional energy which the Glass Works needs up to the full capacity of the hydro-electric plant and its auxiliaries as they now exist or may be increased.

3. POINT OF DELIVERY: The electric energy to be supplied to the Glass Works hereunder shall be delivered at the outgoing side on the main switch or switches on the low tension side of the main step down transformers of the substation to be constructed, owned and maintained by the Power Plant. Location of this substation will be on the property of the Glass Works at its manufacturing plant, this property to be leased to the Power Plant for the period of its contract at a rental of $1.00 per annum.

4. SCHEDULE OF RATES: Attached hereto and made a part hereof by reference, the same so incorporated herein, is a schedule of rates. The Glass Works agrees to pay for the energy supplied by the Power Plant at the rates fixed in Schedule which is entitled, "Greenwood County Municipal Power Rates to Industries, Schedule B".

5. MINIMUM DEMAND: The Glass Works agrees to purchase not less than 840,000 kilowatt hours each calendar year or in lieu of this purchase will pay a minimum of $4,000.00 per calendar year. This minimum per calendar year to be void for any specific calendar year or part thereof if the reduced power consumption of the Glass Works is caused by the Acts of God, the public enemy, the authority of law, or the acts or defaults of the Power Plant.

6. CONTRACT NOT TRANSFERABLE: Neither this contract nor any interest therein shall be transferred or assigned by the Glass Works to any other party without written consent of the Power Plant.

7. FAILURE TO MAKE PAYMENT: Payment for

(384) energy used during any calendar month shall be due on the 15th of each succeeding month. Upon failure of the Glass Works to pay for the energy used for any calendar month within thirty days after the close of said month the Power Plant shall have the right to discontinue the supply of energy and refuse to resume delivery thereof so long as any part thereof remains unpaid. Discontinuance of supply under this Section will not relieve the Glass Works of its liability for the agreed monthly payment during the time the supply of energy is so discontinued. To any amount remaining unpaid on the first day of the calendar month following the due date, there shall be added a penalty of one per cent (1%) and an additional one per cent (1%) shall be added on the first day of each succeeding month until the amount is paid in full.

8. INTERRUPTION OF SERVICE: The Power Plant will furnish energy as agreed upon continuously so far as reasonable diligence and modern equipment will permit, but the Power Plant, its officers, agents or employees shall not be liable for damages when, for any reason suspension of the operation of power systems of the Power Plant, or any part thereof, interfere with the delivery of electric energy to the Glass Works, nor shall such interruption constitute a breach of this contract on the part of the Power Plant. The Power Plant will make adjustments of the monthly minimum during the period of interruption.

IN WITNESS WHEREOF, The parties have hereunto signed their names the day and year first above written.

IN THE PRESENCE OF:

_____

_____

_____

_____

(COPY)

GREENWOOD COUNTY MUNICIPAL POWER PLANT,

By _____
Chairman.

_____
Secretary.

THE LAURENS GLASS WORKS,

By _____

(385) SCHEDULE B.

Greenwood County Municipal Power Rates To Industries Available.

To industrial power users having demands in excess of 10 K. W. Service at primary distribution voltage or secondary distribution voltage at discretion of PURCHASE.

DEMAND CHARGE

$1.15 per K. W. per month.

Demand-Maximum integrated thirty (30) minutes period.

ENERGY CHARGE

First	10,000 K. W. H. per month at	11.5 Mills per K. W. H.
Next	25,000 K. W. H. per month at	6.9 Mills per K. W. H.
Next	65,000 K. W. H. per month at	4.6 Mills per K. W. H.
Next	400,000 K. W. H. per month at	3.45 Mills per K. W. H.

EXCESS

Over	500,000 K. W. H. per month at	2.875 Mills per K. W. H.

In no case shall the energy charge plus the demand charge aggregate less than 6.5 mills per K. W. H. for current consumed.

MINIMUM MONTHLY BILL.

$1.15 per K. W. of maximum demand, but in no case shall the maximum demand for billing purposes be taken as less than 60% of the maximum monthly demand billed during the preceding twelve (12) consecutive months period.

583

(386) SEASONABLE LOADS

PURCHASER may in its discretion discontinue service on seasonal loads and establish a minimum payment for idle months sufficient to cover cost involved.

ADJUSTMENT OF DEMAND.

Demand charge may be adjusted if, and when, power plant deems necessary to correct for power factor lower than eighty-five per cent (85%). Such adjustments shall be made in such manner as to bring the demand charge to the equivalent of eighty-five per cent (85%) power factor.

PLAINTIFFS' EXHIBIT #41.

POWER CONTRACT BETWEEN THE FARMERS OIL MILL AND GREENWOOD COUNTY BY ITS FINANCE BOARD.

This contract is conditional upon its approval by the Public Works Administration and the approval of a loan by the P. W. A. for the construction of the proposed hydro-electric development.

This agreement entered into this 18 day of June, 1934, pursuant to Revenue Bond Act, approved May 8, 1933. (Statues of 1933, page 411), passed by the Legislature of the State of South Carolina, and other laws permitting the construction of municipal power plants, between Greenwood County, represented by Greenwood County Finance Board, hereinafter called the "Power Plant", and its successors and assigns, and the Farmers' Oil Mill, a private corporation doing business in the County of Newberry, South Carolina, hereinafter called the "Oil Mill".

NOW, THEREFORE, For and in consideration of the mutual covenants herein contained, the parties hereto mutually covenant and agree as follows:

1. TERM OF CONTRACT: This contract shall become operative upon the completion of the proposed

(387) hydro-electric project and when sufficient water has been impounded to supply adequate power, all of which is expected to come to pass during the year 1936 and shall continue in effect for a period of not less than five years.

2. POWER SUPPLY: The Power Plant will during the term hereof supply primary electric power to the Oil Mill. The Oil Mill agrees to purchase and the Power Plant to supply the entire power requirements of the Oil Mill. Primary power, as herein used, is defined as power available continuously and is not interrupted on account of lack of water supply.

3. POWER RATE: All power consumed will be paid for at the uniform rate of one cent ($0.01) per kilowatt hour. Payment for energy used in any calendar month shall be due on the fifteenth of the succeeding month.

4. DELIVERY OF POWER: Current will be measured by meters located at the plant of the Farmers' Oil Mill at approximately 2200 volts.

5. The Oil Mill agrees to use a minimum of 550,000 kilowatt hours of power per year.

IN WITNESS WHEREOF, The parties have hereunto signed their names the day and year first above written.

THE FARMERS' OIL MILL,
BY J. H. WICKER, MGR.
Manager.

AS TO GREENWOOD) D. T. DUNCAN
J. C. CORLEY

GREENWOOD COUNTY BY ITS FINANCE BOARD FOR GREENWOOD COUNTY,
BY E. L. BROOKS,
Chairman.
E. I. DAVIS,
Secretary.

IN THE PRESENCE OF:
D. T. DUNCAN
MRS. O. M. COBB.

(388) **PLAINTIFFS' EXHIBIT #41.**

POWER CONTRACT BETWEEN GRENCO OIL COMPANY AND GREENWOOD COUNTY BY ITS FINANCE BOARD

This contract is conditional upon its approval by the Public Works Administration and the approval of a loan by the P. W. A. for the construction of the proposed hydro-electric development.

This agreement entered into this 12th day of June, 1934, pursuant to Revenue Bond Act, approved May 8, 1933 (Statutes of 1933, page 411) passed by the Legislature of the State of South Carolina, and other laws permitting the construction of municipal power plants, between Greenwood County, represented by Greenwood County Finance Board, hereinafter called the "Power Plant" and its successors and assigns, and the Grenco Oil Mill, a private corporation doing business in the County of Greenwood, South Carolina, hereinafter called "Grenco".

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained, the parties hereto mutually covenant and agree as follows:

1. TERM OF CONTRACT: This contract shall become operative upon the completion of the proposed hydro-electric project and when sufficient water has been impounded to supply adequate power, all of which is expected to come to pass during the year 1936, and shall continue in effect for a period of not less than five years.

2. POWER SUPPLY: The Power Plant will during the term hereof supply primary electric power to Grenco. Grenco agrees to purchase and the Power Plant to supply the entire power requirements of Grenco. Primary power, as herein used, is defined as power available continuously and is not interrupted on account of lack of water supply.

3. POWER RATE: All power consumed will be paid for at the uniform rate of one cent ($0.01) per kilowatt

(389) hour. Payment for energy used in any calendar month shall be due on the fifteenth of the succeeding month.

4. DELIVERY OF POWER: The Power Plant will provide a transformer station at the Grenco Oil Mill on the property of Grenco and deliver power at 2300 volts.

5. Grenco agrees to use a minimum of 450,000 kilowatt hours of power per year.

IN WITNESS WHEREOF, the parties have hereto sigend their names the day and year first above written.

6. See below.

IN THE PRESENCE OF: GRENCO OIL COMPANY
BY H. L. ALLEN
D. T. Duncon) As to Gen. Mgr. and Treasurer.
) Power
D. B. Sizemore) Plant.

IN THE PRESENCE OF: GREENWOOD COUNTY
BY ITS FINANCE
Elizabeth Barrett) As to BOARD FOR GREEN-
C. H. Burnett) Grenco. WOOD COUNTY,
By _____
Chairman
E. I. DAVIS
Secretary.

6. Continued.

Attached hereto and made a part of this agreement is an alternate form of contract. It is understood that this customer has the option of changing to this alternate form at any time before the delivery of power commences to THE GRENCO OIL COMPANY.

(390) SCHEDULE B.

Greenwood County Municipal Power Rates to Industries, Available.

To industrial power users having demands in excess of 10 K. W. Service at primary distribution voltage or secondary distribution voltage at discreton of PURCHASER.

Demand Charge:

$1.15 per K. W. per month.

Demand-Maximum integrated thirty (30) minute period.

Energy Charge:

First	10,000 K. W. H. per month at	11.5 Mills per K. W. H.
Next	25,000 K. W. H. per month at	6.9 Mills per K. W. H.
Next	65,000 K. W. H. per month at	4.6 Mills per K. W. H.

Excess

Over	500,000 K. W. H. per month at	2.875 Mills per K. W. H.

In no case shall the energy charge plus the demand charge aggregate less than 6.5 Mills per K. W. H. for current consumed.

Minimum Monthly Bill:

$1.15 per K. W. of maximum demand, but in no case shall the maximum demand for billing purposes be taken as less than 60% of the maximum monthly demand billed during the preceding twelve (12) consecutive months period.

Seasonal Loads:

PURCHASER may in its discretion discontinue serv-

(391) vice on seasonal loads and establish a minimum payment for idle months sufficient to cover costs involved.

Adjustment of Demand:

Demand charge may be adjusted if, and when, power plant deems necessary to correct for power factor lower than eighty-five (85%) per cent. Such adjustments will be made in such manner as to bring the demand charge to the equivalent of eighty-five (85%) per cent power factor.

PLAINTIFFS' EXHIBIT #41.

POWER CONTRACT BETWEEN GREENWOOD COUNTY MUNICIPAL POWER PLANT AND GRENCO OIL COMPANY

This contract is conditional upon the approval of a loan by and from the Government of the United States, and complete approval by the Government of the agreements herein.

THIS AGREEMENT, made and entered into this day of , 193 , pursuant to Revenue Bond Act #465 (299), approved May 8, 1933, passed by the Legislature of the State of South Carolina, and other laws permitting the construction of municipal power plants, between the Greenwood County Municipal Power Plant, hereinafter called the "Power Plant", and its successors and assigns, and Grenco Oil Company, a pricate corporation doing business in the County of Greenwood, South Carolina, hereinafter called "Grenco".

WHEREAS, the Power Plant is being constructed and operated for the mutual benefit of the County of Greenwood and its citizens in order to improve the living conditions in rural communities and the towns, and is not organized or doing business for the profit with the exception of any surplus which might be applied for the relief of taxation.

NOW, THEREFORE, For and in consideration of the mutual covenants herein contained, the parties hereto mutually covenant and agree as follows:

(392) 1. TERM OF CONTRACT: This contract shall become operative upon the completion of the proposed hydro-electric project and when sufficient water has been impounded to supply adequate power, all of which is expected to come to pass in the year of 1936, and shall continue for a period of five years from that date.

2. POWER SUPPLY: The Power Plant will during the term hereof supply electric energy to Grenco for the purpose of operating machinery and other pertinent necessities. Grenco agrees to purchase, and the Power Plant to supply, the entire power requirements of Grenco, except as herein specified. Said energy will be delivered in the form of three phases, alternating current at approximately 60 cycles per second and approximately 2300 volts. The maximum amount of electricity (called reserve power) which the Power Plant agrees to supply is 500 K. V. A. but Grenco may, upon securing the consent of the Power Plant, and conformity with such additional or supplemental agreements as the parties may enter into, increase such maximum demand.

The Power Plant expects to supply under this agreement approximately seven hundred and fifty thousand (750,000) kilowatt hours per year. However, the Power Plant has the option of supplying any additional energy which Grenco needs up to the full capacity of the hydro-electric plant and its auxiliaries as they now exist or may be increased.

3. POINT OF DELIVERY: The electric energy to be supplied to Grenco hereunder shall be delivered at the outgoing side on main switch or switches on the low tension side of the main step-down transformers of a substation to be constructed, owned and maintained by the Power Plant. Location of this substation will be on the property of Grenco at its manufacturing plant, this property to be leased to the Power Plant for the period of its contract at a rental of $1.00 per annum.

4. SCHEDULE OF RATES. Attached hereto and made a part hereof by reference, the same so incorporated herein, is a schedule of rates. Grenco agrees to pay for the enery supplied by the Power Plant at the rates fixed in Schedule which is entitled, "Green-

(393) wood County Municipal Power Rates to Industries, Schedule B".

5. MINIMUM DEMAND: Grenco agrees to purchase not less than 400,000 kilowatt hours each calendar year or in lieu of this purchase will pay a minimum of $4000.00 per calendar year. This minimum per calendar year to be void for any specific calendar year or part thereof if the reduced power consumption of Grenco is caused by the acts of God, the public enemy, the authority of law or the acts or defaults of the Power Plant.

6. CONTRACT NOT TRANSFERABLE: Neither this contract nor any interest therein shall be transferred or assigned by the Grenco to any other party without the written consent of the Power Plant.

7. FAILURE TO MAKE PAYMENT: Payment for energy used during any calendar month shall be due on the 15th of each succeeding month. Upon failure of Grenco to pay for the energy used for any calendar month within thirty days after the close of said month the Power Plant shall have the right to discontinue the supply of energy and refuse to resume delivery thereof so long as any part thereof remains unpaid. Discontinuance of supply under this Section will not relieve Grenco of its liability for the agreed monthly payment during the time the supply of energy is so discontinued. To any amount remaining unpaid on the first day of the calendar month following the due date, there shall be added a penalty of one (1%) per cent and an additional one (1%) per cent shall be added on the first day of each succeeding month until the amount is paid in full.

8. INTERRUPTION OF SERVICE: The Power Plant will furnish energy as agreed upon continuously so far as reasonable diligence and modern equipment will permit, but the Power Plant, its officers, agents or employees shall not be liable for damages when, for any reason suspension of the operation of power systems of the Power Plant, or any part thereof, interfere with the delivery of electric energy to Grenco, nor shall such interruption constitute a breach of this contract on the part of the Power Plant. The Power Plant will make adjustments of the monthly minimum during the period of interruption.

(394) IN WITNESS WHEREOF, the parties have hereunto signed their names the day and year first above written.

GREENWOOD COUNTY MUNICIPAL POWER PLANT,

By _____

_____

_____

GRENCO OIL COMPANY,

By _____

IN THE PRESENCE OF:

_____

_____

(COPY)

PLAINTIFFS' EXHIBIT #41.

POWER CONTRACT BETWEEN GREENWOOD COUNTY BY ITS FINANCE BOARD AND THE CITY OF GREENWOOD.

This contract is conditional upon the approval of a loan by and from the Government of the United States, and complete approval by the Public Works Administration of the agreements herein.

This Agreement, made and entered into this 6 day of June 1934, pursuant to Revenue Bond Act, approved May 8, 1933, (Statutes of 1933, page 411), passed by the Legislature of the State of South Carolina and other laws permitting the construction of municipal power plants, between Greenwood County represented by Greenwood County Finance Board, hereinafter called the "Power Plant", and its successors and assigns, and the City of Greenwood, South Carolina, hereinafter called "The City".

NOW, THEREFORE, For and in consideration of the mutual covenant herein contained, the parties hereto mutually covenant and agree as follows:

1. TERM OF CONTRACT: This contract shall become operative upon the completion of the proposed hydro-electric project and when sufficient water has been

(395) impounded to supply adequate power, all of which is expected to come to pass in the year 1936, and shall continue in effect for a period of not less than five years from that time.

2. POWER SUPPLY: The Power Plant will during the term hereof, supply electric energy to the City for distribution or sale. The City agrees to purchase and the Power Plant to supply a minimum of 3,000,000 kilowatt hours primary power per year at an approximately average rate of consumption. The word primary, as herein used, means power that is furnished continuously and not interrupted on account of lack of water supply. In addition to the specified minimum, The City agrees to purchase and the Power Plant agrees to supply the City's entire power requirements up to a maximum of 7,000,000 kilowatt hours per year at an approximately average rate of consumption. The Power Plant agrees to furnish additional energy at the same rate above 7,000,000 kilowatt hours a year, if it has this additional energy available. Said energy at approximately 60 cycles per second and approximately 2300 volts.

3. POWER RATE: The City agrees to pay the Power Plant not later than the 15th of each month for all power consumed during the preceding calendar month at a uniform rate of seven and one-half mills ($0.0075) per kilowatt hour measured by meters on the low tension side of the main step down transformers located at the City of Greenwood.

4. GENERAL PROVISIONS: The Power Plant will furnish energy as agreed upon *continuously* so far as reasonable diligence and modern equipment will permit, and agrees not to sell or contract to sell primary power in excess of the primary power which would be available under similar stream-flow conditions as prevailed during the dry period of 1925-1926, as indicated by Government Records from the stream gaging station at Chappels, from the proposed power plant as contemplated or may be enlarged. The Power Plant further agrees to construct and maintain a loop or double transmission line to The City from Buzzards Roost Power Plant. This power line will be built of the most modern lightning-proof equipment which it is practical to use. The Power

(396) Plant will also install satisfactory voltage regulators at the City of Greenwood.

IN WITNESS WHEREOF, The parties have hereunto signed their names the day and year first above written.

THE CITY OF GREENWOOD,
By W. A. BARNETT,
Mayor.
GREENWOOD COUNTY BY ITS FINANCE BOARD,
By E. L. BROOKS,
Chairman,
E. I. DAVIS,
Secretary.

IN THE PRESENCE OF:

D. T. DUNCAN
J. H. COLEMAN

PLAINTIFFS' EXHIBIT #41.

POWER CONTRACT BETWEEN GREENWOOD COUNTY BY ITS FINANCE BOARD AND THE CITY OF LAURENS

This contract is conditional upon the approval of a loan by and from the Government of the United States, and complete approval by the Public Works Administration of the agreements herein.

This agreement, made and entered into this 15th day of June, 1934, pursuant to Revenue Bond Act, approved May 8, 1933, (Statute of 1933 page 411), passed by the Legislature of the State of South Carolina, and other laws permitting the construction of municipal power plants, between Greenwood County represented by Greenwood County Finance Board, hereinafter called the "Power Plant", and its successors and assigns, and the City of Laurens, South Carolina, hereinafter called "The City".

NOW, THEREFORE, For and in consideration of the mutual covenants herein contained, the parties hereto mutually covenant and agree as follows:

(397) 1. TERM OF CONTRACT: This contract shall become operative at the option of the City either upon the completion of the proposed hydro-electric project and when sufficient water has been impounded to supply adequate power, or at any time prior to January 1st following the completion of plant, all of which is expected to come to pass in the year 1936, and shall continue in effect for a period of not less than five years from that time, provided that if the Power Plant is not ready to furnish power as provided herein on or before January 1, 1937, The City shall have the option to declare this contract null and void.

2. POWER SUPPLY: The Power Plant will during the term hereof supply electric energy to the City at its plant in the City of Laurens for distribution or sale. The City agrees to purchase and the Power Plant to supply a minimum of 900,000 kilowatt hours primary power per year at an approximately average rate of consumption. The word primary, as herein used, means power that is furnished continuously and not interrupted on account of lack of water supply. In addition to the specified minimum, The City agrees to purchase and the Power Plant agrees to supply The City's entire power requirements up to a maximum of 2,000,000 kilowatt hours per year at an approximately average rate of consumption. The Power Plant agrees to furnish additional energy at the same rate above 2,000,000 kilowatt hours a year if it has this additional energy available. Said energy at approximately 60 cycles per second and approximately 2300 volts.

3. POWER RATE: The City agrees to pay the Power Plant not later than the 15th of each month for all power consumed during the preceding calendar month at the rates quoted in Schedule A, as follows:

SCHEDULE A.

First	50,000 K. W. H.	@	0.800¢
Next	50,000 K. W. H.	@	0.775¢
Next	100,000 K. W. H.	@	0.750¢
Next	100,000 K. W. H.	@	0.725¢
Excess		@	0.700¢

(398) The current will be measured by meters on the low tension side of the main step-down transformers located at the Laurens Plant.

4. GENERAL PROVISIONS: The Power Plant will furnish energy as agreed upon *continuously* so far as reasonable diligence and modern equipment will permit, and agrees not to sell or contract to sell primary power in excess of the primary power which would be available under similar stream flow conditions as prevailed during the dry period of 1925-1926 as indicated by Government Records from the stream gaging station at Chappells, from the proposed power plant as contemplated or may be enlarged. The Power Plant further agrees to construct and maintain a loop or double transmission line to the City from Buzzards Roost Power Plant. This power line will be built of the most modern lightning-proof equipment which it is practical to use. The Power Plant will also install satisfactory voltage regulators at the City of Laurens. It is understood that joint ownership will be entered into by Greenwood County, Laurens County, and Newberry County to the extent that each County will share in any advantages, privileges and benefits granted in the proportion to which power from the Power Plant is sold in each County.

IN WITNESS WHEREOF, The parties have hereunto signed their names the day and year first above written.

IN THE PRESENCE OF: THE CITY OF LAURENS,
BY JOE F. SMITH,
Mayor.

WILLIE I. ALEXANDER
RICHARD BABB.
D. T. DUNCAN
D. B. SIZEMORE.

ATTEST: M. P. SIMPSON,
Clerk.

GREENWOOD COUNTY
BY ITS FINANCE
BOARD,
By E. L. BROOKS,
Chairman.
E. I. DAVIS,
Secretary.

(COPY)

(399) **PLAINTIFFS' EXHIBIT #45.**

Plaintiffs introduced in evidence as their Exhibit 45' Regulations of the South Carolina Board of Health Governing the Control of the Mosquito Production on Impounded Water, issued February 25, 1932, the material parts of which are as follows:

"3b. In the area to be occupied by the reservoir, its branches, bights, and indentations, all brush, trees, undergrowth, logs, stumps, and similar objects, which, if not removed would float on the surface of the impounded water soon after the impounding of the water, and all of the above material that is lying on the ground or remaining in the original or new positions, which would probably cause collections of floatage to gather, and thus constitute conditions favorable to the protection of larvae of mosquitoes capable of conveying malaria, shall be removed and burned, or otherwise disposed of in a manner satisfactory to the Executive Committee of the State Board of Health, prior to the impounding of the water.

"3c. In the area to be occupied by the reservoir, its branches, bights, and indentations, all brush, trees and undergrowth which would pierce the surface at low-water level, shall be cut off at least one-foot below such low-water level to prevent the collection and anchorage of any possible floatage, rafts, etc.

"3d. The shore line of the reservoir, its branches, bights, and indentations from minimum low-water level to a line five feet horizontally beyond maximum high-water level, shall be cleared and maintained clear of all brush, and undergrowth. Large trees need not be removed from this strip."

(400) **STATEMENT OF EVIDENCE.**

PART IV

DEFENDANTS' EXHIBIT #2.

This exhibit is the application of The Finance Board of Greenwood County to the Federal Power Commission for a license to construct the Buzzard Roost project and contains, in a letter from the Finance Board to the Commission, the following description of the project:

"On February 9, 1934, Greenwood County made application for a license to construct a Municipal Hydro-Electric Power Plant at the Buzzard's Roost Dam site on Saluda River."

Certain extracts from this exhibit are attached to the bill of complaint as exhibit II, and reference is made thereto.

DEFENDANTS' EXHIBIT #3.

FEDERAL POWER COMMISSION

LICENSE AFFECTING NAVIGABLE WATERS
PROJECT NO. 1267, SOUTH CAROLINA
GREENWOOD COUNTY.

(pp. 1-2) WHEREAS, by Act of Congress approved June 10, 1920 (Stat. 1063), designated therein as "The Federal Water Power Act", and hereinafter called "the Act", the Federal Power Commission hereinafter called "the Commission", is authorized and empowered to issue licenses for water power projects upon any part of the public lands and reservations and upon or affecting any of the navigable waters of the United States; and

WHEREAS, GREENWOOD COUNTY, hereinafter called "the Licensee", a municipality organized and existing under the laws of the State of South Carolina and having its office and principal place of business in the city of Greenwood, in the State of South Carolina, has made application in due and proper form to the Commis-

(401) sion for a license for a power project designated as project No. 1267 on the records of the Commission, and for authority to construct, operate, and maintain at the Buzzard Roost site in the vicinity of Chappells, in the Counties of Greenwood, Newberry, and Laurens, State of South Carolina, certain project works, as hereinafter described, necessary or convenient for the development and improvement of navigation and for the development, transmission, and utilization of power across, along, from, and in the Saluda River; and

WHEREAS, the Commission, pursuant to the provisions of Section 23 of the Act, at its meeting of January 15, 1934, found that the interests of interstate and foreign commerce would be affected by the proposed construction; and

* * * * * *

WHEREAS, the Commission has found that said project, as hereinafter described, is best adapted to a comprehensive scheme of improvement and utilization for the purposes of navigation, of water power development, and of other beneficial public uses; and

* * * * * *

NOW, THEREFORE, the Commission hereby issues this license to the Licensee for the purpose of constructing, operating and maintaining said project works, necessary or convenient for the development and improvement of navigation and for the development, transmission, and utilization of power across, along, from, or in the Saluda River, and constituting a part of the project hereinafter described; * * *.

(p. 14) IN WITNESS WHEREOF, the Federal Power Commission has caused its name and seal to be hereto signed and affixed by its Chairman, Frank R. McNinch, this 11th day of February, 1935, pursuant to an order adopted at its meeting on November 2, 1934.

FEDERAL POWER COMMISSION
By FRANK R. McNINCH,
Chairman.

Attest:

G. W. LINEWEAVER,
Secretary.

(Seal)

(402) **DEFENDANTS' EXHIBIT #4.**

CERTIFIED RECORDS OF THE FEDERAL POWER COMMISSION

The following is an extract from the minutes of a meeting of the Federal Power Commission held January 15, 1934:

Declaration of Intention

Finance Board for Greenwood County, S. C. (DI-122)

The following action was taken:

WHEREAS, the Finance Board for Greenwood County, South Carolina filed a declaration of intention on December 10, 1933, to construct a water-power project at the Buzzards Roost site on the Saluda River, affecting lands in Greenwood, Newberry, and Laurens Counties, South Carolina; and

WHEREAS, the Saluda and Broad Rivers join at Columbia, South Carolina, to form the Congaree River; and the Congaree and Wateree Rivers join 52 miles below Columbia to form the Santee River; said Congaree and Santee Rivers being navigable waters of the United States; and it appearing:

(1) That the proposed project works would consist of an earthen dam, reservoir, power house, and appurtenant works;

(2) That the dam would create a power head of 60 feet; that the reesrvoir would have total storage capacity of 275,000 acre-feet, and usable capacity of about 100,000 acre-feet with 10-foot drawdown; and that the declarant proposes to install machinery having total capacity of 21,900 horsepower, in three units of 7,300 horsepower each;

(3) That the proposed reservoir could be so operated

(403) as materially to reduce navigable depths in the Congaree and Santee Rivers.

Now, therefore, having considered said declaration of intention, together with reports, correspondence, and other information pertaining thereto, the Commission *finds*:

That the interests of interstate and foreign commerce would be affected by the proposed construction.

D. I. No. 122
Finance Board for Greenwood
County, S. C. January 12, 1934.

MEMORANDUM FOR THE COMMISSION:

1. The Finance Board for Greenwood County, South Carolina, by letter dated December 8, 1933 (received in this office December 10, 1933), filed a declaration of intention to construct a water-power project at the Buzzards Roost site on the Saluda River in South Carolina. Pursuant to your instructions, I have investigated the proposed construction, and as a result thereof this report is submitted. The project will be referred to hereinafter as the Buzzards Roost project.

* * * * * * *

4. Attached to this memorandum is a sketch map showing the location of the Buzzards Roost project, and the principal streams of the Santee River system. It will be noted that the Saluda and Broad Rivers join at Columbia to form the Congaree River; and that in turn the Congaree and Wateree join 52 miles below Columbia to form the Santee River. The Santee-Congaree River is navigable for vessels with draft of 4 feet, from its mouth to Columbia, a distance of 195 miles. The Saluda River has never been improved for navigation by the United States. The annual report of the Chief of Engineers for 1889 contains a report by Captain Frederic V. Abbot Corps of Engineers, from which the following statements are quoted:

(404). "The fall in the lower 60 miles (of the Saluda River) is 3.9 feet per mile. In the next 65 miles it is 5.6 feet per mile, and in the next 10 miles, or up to the crossing of the Air Line Railway, it is 6 feet per mile. In the whole distance of 135 miles it is 4.9 feet per mile. These figures . . . show the impossiblity of improvement (of Saluda River) except at great cost. . . . It is unworthy of improvement."

5. The statements contained in the above quotation refer to improvement for navigation. Power development was not under consideration at that time. The following statement is quoted from the annual report of the Chief of Engineers for 1908, part I, page 323:

"Preliminary examination of Saluda River, South Carolina, between Columbia and Hollow Creek.—Reported dated December 19, 1907, is printed in House Document No. 651, Sixtieth Congress, first session. The locality is not considered worthy of improvement by the General Government."

6. It appears from the foregoing statements and quotations that the Saluda River is not navigable waters of the United States within the meaning of section 3 of the act. It is unquestionably a nonnavigable stream at and above the Buzzards Roost dam site, and below the dam site to the head of the existing Saluda Reservoir (Lake Murray). There are no navigation locks at the Saluda Dam. The discharge at the Buzzards Roost site is estimated as ranging from a minimum of about 200 c. f. s. to a maximum of about 55,000 c. f. s. The small low-water flow and the steep slope of the stream seem to preclude serious consideration of its improvement for navigation.

* * * * * * *

11. The application of the Lexington Water Power Company, of Columba, South Carolina, filed July 1, 1927, for a license for a water-power project on the Saluda River at the Dreher Shoals site, was treated by the Commission as a declaration of intention, and at its meeting of July 8, 1927, the Commission made a finding "that the interests of interstate or foreign commerce would be affected by such proposed construction." The principal

(405) reason for assuming jurisdiction was "that the project, if not properly regulated, would have an adverse effect on the navigable capacities of the Congaree and Santee Rivers". Substantially the same reasons exist for assuming jurisdiction at the Buzzards Roost site. It is true that the Saluda Reservoir is very large in comparison with the proposed Buzzards Roost Reservoir; but the later reservoir is sufficiently large that the entire flow could be shut off for days. The reregulating effect of the Saluda Reservoir will tend to prevent the effects of Buzzards Roost Reservoir operation from being noticeable in the Congaree and Santee Rivers. The fact remains, however, that if this Commission had not permitted the construction of the Saluda Reservoir, the operation of the proposed Buzzards Roost Reservoir would substantially affect the interests of navigation.

Conclusions

12. The Saluda River is not "navigable waters of the United States" within the meaning of section 3 of the act.

* * * * * * *

16. I recommend that the Commission find that the interests of interstate and foreign commerce would be affected by the proposed construction.

(sd) ROGER B. McWHORTER,
Chief Engineer.

McW:ARH

Also certified and attached is a map of South Carolina showing location of the project, detail map showing Dam Site Topography, made by D. T. Duncan, Engineer for Greenwood County, containing the following approval of the War Department:

(406) WAR DEPARTMENT

Approved so far as the plans affect the navigable capacity of navigable waters of the US

Oct. 1934 DOUGLAS McARTHUR,
Acting Secretary of War

Oct. 26, 1934 G. B. PILLSBURY,
Brig. Gen. Acting Chief of Engineers.

Also a general design drawing showing plans, elevations and sections of structures, prepared by D. T. Duncan, Engineer, bearing the following approval of the War Department:

WAR DEPARTMENT

Approved so far as the plans affect the navigable capacity of navigable waters of the US.

Oct. 1934 DOUGLAS McARTHUR,
Acting Secretary of War.

October 26, 1934 G. B. PILLSBURY,
Brig. Gen. Acting Chief of Engineers.

DEFENDANTS' EXHIBIT #5.

Defendants introduced in evidence as their Exhibit #5 Document No. 96, House of Representatives, 73rd Congress, First Session, and it is agreed that on the appeal either party may refer to and use any part of this document and that if deemed necessary the original exhibit shall be transmitted by the Clerk of the United States District Court to the Circuit Court of Appeals.

(407) **DEFENDANTS' EXHIBIT #7.**

BUZZARD ROOST HYDRO-ELECTRIC DEVELOPMENT.

TOTAL ESTIMATED COST OF PROJECT

NO.	ITEM	TOTAL
1.	Preliminary drilling (Completed)	$ 6,611.35
2.	Acquisition of land—12,566 acres @ $17.50 per acre	219,905.00
3.	Transmission right of way—102 mi. @ $300.00	30,600.00
4.	Clearing Reservoir—6,000 acres @ $30.00	180,000.00
5.	General Contract (Bids received) Low Bidder	622,190.22
6.	Hydraulic Turbines (Bids Received) Low Bidder	168,327.50
7.	Electrical Generators, Substation, etc. (Bids Received) Low Bidder	324,544.00
8.	Gates, Racks, Crane, etc. (Bids Received) Low Bidder	74,350.00
9.	Station Wiring	9,600.00
10.	Main transmission lines (44,000 volts) 102 Mi. at $3,040 per Mi.	310,000.00
11.	Substations	161,817.00
12.	Re-routing Duke Power Company 100,000 volt transmission line, 2 Mi.	26,185.00
14.	Telephone connection to Power House from Greenwood exchange	2,000.00
13.	Re-routing Bell Telephone Line	6,000.00
15.	Raising S.A.L.R.R. over Saluda River	29,430.36
16.	Relocating S.A.L.R.R., over Cane Creek	45,128.30
17.	Raising C & W.C.R.R., over Saluda River	34,196.10
18.	Rip-rap on fills at Cothran's bridge on Highway #7	1,600.00
19.	Raising bridge on highway #10 over Reedy River	9,241.25
20.	Raising Boyd's bridge over Saluda River on Highway #10	1,418.20
21.	Raising Smith's bridge over Saluda	

(408)	River	3,700.62
22.	Sodding downstream side of dam	2,424.00
23.	Erecting Superintendents at $25 per day (Bid price)	5,000.00
24.	Engineering	154,001.89
25.	Legal and Administrative	55,000.00
26.	Interest during construction	75,000.00
27.	Advertising contracts	300.00
28.	Printing bonds	1,000.00
29.	Contingencies	292,429.21
	TOTAL ALLOTMENT	$2,852,000.00

DEFENDANTS' EXHIBIT #23.

COMPARISON OF ENGINEER'S ESTIMATE AND SUCCESSFUL CONTRACTORS' BID ON ITEMS UPON WHICH BIDS HAVE BEEN RECEIVED

No.		Engineers Estimate F. P. C. License Application	Contractors' Bid
1	Access Railroad	$ 2,940.00	Reflected in price other items
2	Fill in Dam	219,218.20	$ 207,290.07
3	Diverting Culvert	14,000.00	Not required in present layout.
4	Stripping dam base M/3	7,000.00	3,333.50
5	Core trench excavations	6,800.00	14,852.95
6	Clearing and grubbing dam area	862.50	2,300.00
5	Core trench excavations	6,800.00	14,852.95
7	Gravel beneath rip-rip	1,750.00	Not required
8	Rip-rap on upstream face of dam	7,400.00	6,204.00
9	Rock excavation at Power House Spillway	94,200.00	97,500.00
10	Earth Excav. at Power House Spillw.	3,800.00	6,500.00
11	Total concrete in Power House	216,844.00	198,282.50
12	Total reinforcing Steel P House Spillway	6,426.00	7,200.00

(409) 13	Earth excavation for rock fill toe		5,227.00
14	Tainter Gates—erected	50,000.00	57,050.00
15	Sluice Gates in Place	60,000.00	16,300.00
16	Trash Racks	7,700.00	4,400.00
17	Power House Superstructure complete with crane	33,100.00	36,100.00
18	Hydraulic Equipment installed	157,200.00	176,327.50
19	Electrical Generators, substation, etc. installed	361,781.00	339,544.00
20	Miscellaneous Struct. Steel Railing, etc.		5,000.00
21	Services of Erecting Supt.		5,000.00
	TOTALS	$1,251,022.00	$1,188,411.72
	SAVING	$62,610.28 to date.	

DEFENDANTS' EXHIBIT 24.

ANNUAL OPERATION AND FIXED CHARGES

1. Debt Services	$138,880.00
2. Insurance	3,000.00
3. Operating Costs:	
Plant Maintenance & Supplies	12,000.00
General Manager	5,000.00
Plant Supt.	3,000.00
4 Operators @ $1,200.00	4,800.00
Machinist	1,000.00
Laborers including Mosquite Control	5,000.00
Transmission Maintenance & Supplies	6,000.00
Line Foreman	1,800.00
2 Linemen @ $1,200.00	2,400.00
2 Groundmen	1,800.00
Meter reader & Service man	1,200.00
Book-keeper—Stenographer	1,200.00
Telephone, Office Supplies, Traveling expenses, etc.	2,400.00
(Total operating costs—$47,600.00)	
TOTAL ANNUAL FIXED COSTS	$189,480.00

DEFENDANTS' EXHIBIT 25.

AMORTIZATION TABLE

GROSS INCOME:

30,000,000 K.W.H. Primary Power @ 8.5 Mills=	$255,000.00
11,000,000 K. W. H. Secondary Power @ 5 Mills=	55,000.00
TOTAL ANNUAL INCOME	$310,000.00

PRINCIPAL:

Allotment	$2,852,000.00
Grant	682,000.00
Principal to be repaid	$2,170,000.00

Year end	Gross Revenue	Operating Cost	Insurance	Net Revenue	Interest @ 4%	Pay on Principal	Unpaid Balance	Accumulated Surplus
1	$310,000	$47,600	$3,000	$259,400	$86,800	$50,000	$2,120,000	$122,600
2	"	"	"	"	84,800	55,000	2,065,000	242,200
3	"	"	"	"	82,600	60,000	2,005,000	359,000
4	"	"	"	"	80,200	65,000	1,940,000	473,200
5	"	"	"	"	77,600	70,000	1,870,000	585,000

(411)

6	$310,000	$47,600	$3,000	$259,400	74,800	70,000	1,800,000	699,600
7	"	"	"	"	72,000	75,000	1,725,000	812,000
8	"	"	"	"	69,000	75,000	1,650,000	927,400
9	"	"	"	"	66,000	75,000	1,575,000	1,045,800
10	"	"	"	"	63,000	80,000	1,495,000	1,162,200
11	"	"	"	"	59,800	85,000	1,410,000	1,276,800
12	"	"	"	"	56,400	90,000	1,320,000	1,389,800
13	"	"	"	"	52,800	90,000	1,230,000	1,506,400
14	"	"	"	"	49,200	95,000	1,135,000	1,621,600
15	"	"	"	"	45,400	95,000	1,040,000	1,740,600
16	"	"	"	"	41,600	100,000	940,000	1,858,400
17	"	"	"	"	37,600	105,000	835,000	1,975,200
18	"	"	"	"	33,400	110,000	725,000	2,091,200
19	"	"	"	"	29,000	115,000	610,000	2,206,600
20	"	"	"	"	24,400	115,000	495,000	2,326,600
21	"	"	"	"	19,800	115,000	380,000	2,451,200
22	"	"	"	"	15,200	120,000	260,000	2,575,400
23	"	"	"	"	10,400	125,000	135,000	2,699,400
24	"	"	"	"	5,400	125,000	10,000	2,828,400
25	"	"	"	"	400	10,000	0	3,077,400

(412) **DEFENDANTS' EXHIBIT 27**

DUKE POWER COMPANY

General Office

Charlotte, N. C.

October 14, 1933.

Mr. Ben M. Sawyer,
Chief Highway Commissioner,
Columbia, South Carolina.

Dear Sir:—

With reference to yours of October 11th, I beg to hand you herewith rates covering service to the South Carolina Highway Commission.

Rates at each point of delivery for Primary Power less than 100 K.W. are as follows:

Kilowatt-hours per month		Per kilowatt-hour
First	50	5.0 cents
Next	250	4.0 "
"	1,200	2.5 "
"	7,500	1.8 "
"	11,000	1.6 "
All over		1.4 "

The monthly minimum charge for the above class of power shall be $1.25 per kilowatt for each kilowatt contracted for.

Rates at each point of delivery for Primary Power of over 100 K.W. are as follows:

Kilowatt-hours per month		Per kilowatt-hour
First	100,000	1.400 cents
Next	100,000	1.375 "
"	100,000	1.350 "
"	100,000	1.300 "
"	100,000	1.250 "
"	100,000	1.175 "
All over		1.100 "

(413) All power of the above class used by the Consumer in excess of the maximum number of kilowatt hours per month permitted to be used under the contract of such Consumer shall be paid for at the rate of 1.40 cents per kilowatt-hour, provided, however, that the company shall be under no obligation to furnish power in excess of the maximum amount required to be furnished by its contract.

The monthly minimum charge for the above class of power shall be $1.25 per kilowatt for each kilowatt contracted for. All meters to be located at points of delivery. Service is subject to the general conditions of the Company covering sale of power, as now on file with the Railroad Commission of South Carolina.

Delivery under the foregoing schedules can be made from any of the existing substations of the Power Company which are now properly equipped and manned for the supplying of a continuous utilities service such as is required by the Highway Commission.

If delivery is to be made at points other than the above, which may require additional facilities and apparatus, or which may require additional operators or attendants so that the continuous service required by the commission can be supplied, the Power Company will assume only such fair part of the additional expenses as the volume of the additional business will justify.

In our conference with you and your representatives we were told that in the use of this power it is not the purpose of the Highway Commission to enter into competition with the utilities companies in areas already served, and the foregoing is based upon this understanding.

Yours very truly,

(s) CHAS. I. BURKHOLDER,
Vice-President.

CIB.FB

(414) **DEFENDANTS' EXHIBIT 28.**

SOUTHERN PUBLIC UTILITIES COMPANY

General Office

Charlotte, North Carolina.

October 13, 1933.

Mr. Ben M. Sawyer,
Chief Highway Commissioner,
Columbia, South Carolina.

Dear Sir:

Referring to your letter of October 11th, I beg to advise that we have not sooner furnished you with rates for your rural electrification program for the reason that we have been endeavoring to investigate the various projects and to obtain as much information regarding same as possible. This work has not yet been completed, however, it is not our purpose to in any way delay you and I hand you herewith copy of our Schedule Number 2 for electric power service, and we shall be glad to render you service under this schedule, subject to the following conditions:

(1) Availability of Service. We cannot tell you where the service is available until we are informed at what point you desire service and the type and character of service which you desire.

(2) Points of Metering. The service is to be metered you at the point of delivery and each delivery point shall be billed separately at the enclosed rates.

(3) Competition. We have understood from our conference with you and your representatives that it is not the purpose of the Highway Commission to enter into competition with the utility companies in areas already served; that you will not do so.

(4) Delivery. That in making delivery of electric current the Utility Company will not be put to any greater

(415) expense than is customarily absorbed in making delivery to customers using similar amounts of power in South Carolina. We understand that this service is to be taken from some point on existing lines of the Utility Company and that the Utility Company will not be expected to make any line investment in connection therewith.

We understand that the details of your request for electric power will be furnished and when this is done, we will be glad to prepare and submit to you a contract for your approval.

Yours very truly,

(s) E. C. MARSHALL,
President.

SOUTHERN PUBLIC UTILITIES COMPANY

Schedule Number 2

Electric Power Service

5	cents	per	K.	W.	H.	for	the	first	50	K. W. H.	used	per month
4	"	"	"	"	"	"	next	250	"	"	"	"
2.5	"	"	"	"	"	"	"	1,200	"	"	"	"
1.8	"	"	"	"	"	"	"	7,500	"	"	"	"
1.6	"	"	"	"	"	"	"	11,000	"	"	"	"
1.4	"	"	"	"	"	"	"	80,000	"	"	"	"
1.35	"	"	"	"	"	"	"	50,000	"	"	"	"
1.3	"	"	"	"	"	"	"	100,000	"	"	"	"
1.25	"	"	"	"	"	"	"	100,000	"	"	"	"
1.2	"	"	"	"	all consumption in excess of 350,000 K. W. H. used per month							

MINIMUM

The Consumer agrees to pay as a minimum service charge, whether current equal to that amount in value shall be used or not.

$1.00 per month for each H.P. connected up to 25 H.P.
.75 per month for each H.P. connected from 26 up to 50 H. P.

(416) .50 per mnth for each H.P. connected from 51 H.P. or over.

These rates same as those in published Schedule No. 2 (S.P.U.Co.)

DEFENDANTS' EXHIBIT NO. 29.

THE BUZZARD ROOST POWER DEVELOPMENT PROJECT

Geography

The proposed Buzzard's Roost dam and powerplant are to be located on the Saluda River in the southwestern part of Newberry County, the eastern part of Greenwood County and three miles south of the southeastern corner of Laurens County. The proposed dam site is about one-half mile north of the Southern Railway bridge and one-quarter mile north of the bridge on State Highway No. 22. The ponded area will be about twenty miles in length and will average a mile in width. The shoreline of the lake will be at the 440 contour line. This places the lake level 60 feet above the level of the Saluda River, which is 380 feet at this point. The Saluda is to be dammed by a 2,200 foot earth fill extending from a point just southeast of Buzzard's Roost across a narrow flood plain to the river bluff on the western side of the river. The end of the ridge at the southeast end of the dam rises 60 feet above the level of the lake.

Buzzard's Roost lies at the northwestern end of a ridge which has been cut by stream erosion into a succession of knobs with a northwest-southeast trend. Buzzard's Roost Hill is surrounded by a semicircular depression opening at both ends into the Saluda River Valley and draining in opposite directions. A small creek that flows southwest through this depression has been responsible for the formation of the small water gap or narrows on the southeast side of this hill.

It would be logical to suppose that the powerplant and spillway would be located at the western end of

(417) the ridge. However, the specifications call for a dam and spillway to be built at the narrows mentioned above. Such a location will have many advantages over one located at any other point. In other words, by making a short, comparatively shallow cut through the divide a concrete dam, powerplant and spillway 300 feet long may be built upon a solid rock foundation and a natural dam six-tenths of a mile in length can be utilized to hold back the waters of the reservoir.

Geology

The portion of South Carolina embraced within the basin of the Saluda River is one of the oldest in the world. The original rock were sedimentary, consisting of sandstones, shales, and limestones deposited in an ocean which covered this area in a very early period of geological history. After a long period of metamorphic changes, during which the rocks were folded and faulted, these original rock were changed to quartzites, slates, mica schists, quartz schists and gneisses. In the folding of this rock the axes had a prevailing northeast-southwest direction. However, locally some of these strikes are from the northwest to the southeast. This is true in the particular area under discussion.

After these rocks were folded a long period of erosion, equal in time to all recorded geological history, has reduced this region to a pene-plain. In the formation of such a pene-plain the harder and more resistant layers of rock stand as ridges or hills while the softer portions have been removed by erosion. In this case it is an extremely hard durable quartz schist that has been responsible for the ridges and knobs already discussed under the geography of the area. These hard rock layers have been responsible for the formation of other notable elevations in South Carolina such as Henry's Mountain, Nanny Knob, Graycourt Knob, and Little Mountain. These hard resistant layers dip at high angles to the northeast and have nearly a northwest strike. The ridges and hills in the vicinity of the dam site are approximately one-fourth mile wide at the bottom and vary from 50 to 100 feet in width at the top. The average elevation of these hills is about 80 feet above the river

(418) and because of the southeast dip the steeper slope of the rock mass faces northwest. During the period of time that the Saluda River and its tributaries have been sculpturing this area there have been many stream adjustments. Piracy, shifting of river channels through meanders, and other features of river adjustment have been responsible for many unusual features noted in the vicinity of the dam site.

It is a very interesting fact that all nature since the beginning of geologic time seems to have been working in this area for the express purpose of forming favorable geological conditions at this dam site. There are no unfavorable engineering problems to be noted. The following favorable conditions should be emphasized:

The earth dam 2,200 feet in length can be anchoed on a firm foundation of quartz schist. This is the rock exposed in all of the keystone borings put down along the line where the dam is to be built. This rock is encountered at an average depth of 20 feet. The first 15 feet of flood plain material consists of a sandy soil with a clay subsoil and from five to six feet of a pure white sand clean enough to be used in some forms of construction work. The earth dam will be tied to both banks at a point favorable both as regards topography and material. The material for the earth dam can be obtained in part from excavating the diversion channel and in part from the area adjacent to the earth dam site. The material at both of these places is clayey enough to make an impervious fill. The building of the earth dam presents no difficulties.

The concrete dam, spillway and powerhouse will be built along the upturned layers of the hard quartzite schist which has been responsible for forming the outstanding elevations of the area. At the surface this rock is now seen in boulder formation. Farther down it may pass into a ledge, but if it does not, it would be sufficiently firm to support the concrete dam, spillway and powerhouse without fear of any settling. These rock have been in position for such a long period of time that they have become thoroughly adjusted to each other, the

(419) joints filled with clay until the whole mass has become the finest kind of a monolithic natural dam. That there is no seepage of water through this layer is shown by the fact that the drainage of the area west of the ridge is so retarded by impervious layers that the soil is saturated to near the top of the hard layer northeast of the rock but not southwest of it. When the water table is higher than the hard layer, the drainage is from it to the Saluda. During a dry spell the water table falls below the top of the hard layer and the stream dries up. However, below the top of the impervious layer the soil is still saturated to such an extent that in many places it resembles a quicksand.

The excavation for the tailrace will be made entirely through mantle rock except in one or two places where the bed rock comes closer than the average to the surface. The approach channel also can be dredged entirely through incoherent material. Wash borings in the small valley between the two ridges show no sign of a rock bottom. This, and the area where the tailrace is to be excavated, are doubtless former channels of some stream which have since been filled with flood plain material and talus.

Conclusions

The Piedmont Plateau area as a whole offers few difficulties from a geological standpoint in the construction of dams, reservoirs and powerplants. The harder formations have been developed through long cycles of erosion into resistant ridges; the softer ones into tight impervious valleys. This generalization is especially true in the Buzzard's Roost area. The Saluda River is one of the oldest streams in the world. It has endeavored for milleniums to level the resistant ridges that cross its path and without avail. There is no evidence to show that a lake with very little erosive power can break or seep through any of the natural barriers of the Buzzard's Roost area.

F. H. H. CALHOUN.

Mch. 1st, 1935

(420) **DEFENDANTS' EXHIBIT 35.**

Defendants' Exhibit 35 is a list of the land options obtained by Greenwood County in connection with the Buzzard Roost project. The list contains options which have expired as well as those which are now in effect. The total acreage covered by the options, including those expired as well as those now in effect, is approximately 11,940 acres; the total option price $188,015; and the average price per acre approximately $15.83. See testimony of defendants' witness, Emmett I. Davis.

DEFENDANTS' EXHIBIT 36.

The defendants introduced in evidence as their Exhibit 36 Minute Book No. 1 of the Finance Board of Greenwood County, which included, among the resolutions passed by said Board relative to said Buzzard Roost project the resolution of October 6, 1934, a copy of which, marked Exhibit "I", is attached to and made a part of the original bill of complaint, and also the resolution which is attached to and made a part of the original answer of Greenwood County and its Finance Board.

MINUTES OF THE GREENWOOD COUNTY FINANCE BOARD

Greenwood, S. C.

June 15, 1935.

The Finance Board for Greenwood County held a special meeting in office of County Supervisor at Court House, Greenwood, South Carolina, at eight o'clock A. M., June 15, 1935, with all members of Board present.

Meeting was called to order by E. L. Brooks, Chairman.

E. I. Davis stated object of meeting to be for the purpose of considering the amendment of Sub-Section B of Section Four of a Resolution entitled "A RESOLUTION PROVIDING FOR THE ISSUANCE OF TWO MILLION, TWO HUNDRED TWENTY THOUSAND

(421) DOLLARS ($2,200,000) REVENUE BONDS OF THE COUNTY OF GREENWOOD, SOUTH CAROLINA, FOR THE CONSTRUCTION OF A HYDRO-ELECTRIC POWER PLANT IN ACCORDANCE WITH THE PROVISIONS OF ACTS 299, ACTS OF SOUTH CAROLINA, 1933, AS AMENDED, AND ACT 1095, ACT OF SOUTH CAROLINA 1934." Adopted October 6, 1934 by the Finance Board of Greenwood County which Section requires Finance Board of Greenwood County to set aside annually from Revenue derived from operation of Greenwood County Hydro-Electric Plant a sum of not less than $50,000.00 to build up a reasonable reserve for depreciation of said system.

After general discussion, R. C. Lominick moved the following Resolution be adopted:

WHEREAS, Section Twenty-Two of South Carolina Act No. 299, 1933 as amended enable Counties, among other things, to build municipal power plants and requires the municipality to set aside annually a "Depreciation Fund" and

WHEREAS, said Act does not specify any specific amount or percentage to be set aside as a "Depreciation Fund" and

WHEREAS, the Public Works Administration does not require Greenwood County to set up a "Depreciation Fund" except such as may be required by local statute, and

WHEREAS, the Finance Board for Greenwood County considers, in view of the fact that Greenwood County Hydro-Electric Power Revenue Bonds mature serially, that the sum of $50,000 is excessive and unnecessary as a "Depreciation Fund".

THEREFORE, BE IT RESOLVED, by the Finance Board for Greenwood County in meeting assembled this 15th day of June 1935 that Sub-Section B of Section Four of a Resolution entitled, "A RESOLUTION PROVIDING FOR THE ISSUANCE OF TWO MILLION, TWO HUNDRED TWENTY THOUSAND DOLLARS

(422) ($2,220,000.00) REVENUE BONDS OF THE COUNTY OF GREENWOOD, SOUTH CAROLINA, FOR CONSTRUCTION OF A HYDRO-ELECTRIC POWER PLANT IN ACCORDANCE WITH THE PROVISIONS OF ACT 299 ACTS OF SOUTH CAROLINA, 1933, AS AMENDED, AND ACT 1095, ACT OF SOUTH CAROLINA 1934". Approved October 6, 1934 be amended so as to read as follows:

(b) INTO THE DEPRECIATION FUND, a sum of not less than $10,000 to build up a reasonable reserve for depreciation of said system:

This motion was seconded by E. I. Davis and after general discussion a vote was called by the Chairman on adoption of this action.

Those voting for motion were: E. L. Brooks, R. C. Lominick, M. G. Bowles, S. A. Agnew, and E. I. Davis.

Those voting against motion: None.

The Chair declared motion carried.

It was moved by E. I. Davis, seconded by M. G. Bowles and carried that the meeting adjourn.

E. L. BROOKS, Chairman. E. I. DAVIS, (Seal) Secretary.

I hereby certify that the above is a true and exact copy of resolution passed by the Finance Board for Greenwood County on June 15, 1935; and that said resolution is properly spread on Finance Board for Greenwood County Official Minute Book No. 1, at page 106-107.

E. I. DAVIS, (Seal)
Secretary Finance Board for
Greenwood County

DEFENDANTS' EXHIBIT 39.

Defendants introduced in evidence as their Exhibit 39 a copy of the Federal Power Commission, National

(423) Power Survey, Interim Report, Power Series No. 1. Plaintiffs duly objected to the introduction of said report on the ground that the same is irrelevant, incompetent and immaterial. Subject to said objection it is agreed that it shall be admissible for either party to present a copy of this exhibit, certified by the Clerk of the U. S. District Court, to the Circuit Court of Appeals at the time of the argument.

DEFENDANTS' EXHIBIT 42.

The defendants introduced in evidence as their Exhibit 42 agreement dated March 14, 1917, between Wateree Power Company and Yadkin River Power Company, the Wateree Power Company now being a part of the Duke Power Company, and the Yadkin River Power Company now being a part of the Carolina Light & Power Company. This contract provides in part as follows:

"WITNESSETH:

"THAT WHEREAS the Yadkin Company is desirous of purchasing electrical power and energy from the Wateree Company as hereinafter set forth, and

"WHEREAS the Wateree Company proposes to construct a hydro-electric plant of large capacity on the Wateree River, at a point approximately seven (7) miles northwest from the City of Camden, South Carolina, which plant is hereinafter referred to as the Wateree Station, and will endeavor to have same completed and ready for operation by June 1, 1919.

"NOW, THEREFORE, in consideration of the covenants and agreements hereinafter contained, the electrical power and energy to be delivered and the sums of money to be paid, the said parties hereto for themselves, their successors and assigns have mutually agreed and do agree with each other as follows:

"FIRST: The Wateree Company agrees to sell and deliver to the Yadkin Company at said Wateree Station,

(424) (hereinafter referred to as the point of delivery) and the Yadkin Company agrees to purchase and take from the Wateree Company, at said point of delivery, upon the terms and conditions herein contained, for and during the period of thirty (30) years beginning with the first day of June, 1919, except as modified hereinafter by pargaraph seventh and thereafter unless and until either party hereto shall have given to the other party hereto, three years' previous notice in writing of its intention to terminate this contract, electrical power and energy, as follows, to-wit: During the year beginning June 1, 1919, or such extended date as hereinafter provided for and ending twelve months thereafter, 7500 kilowatts but not more than 32,850,000 kilowatt hours per year, except as hereinafter provided in Section Nine (9) and Ten (10); during the year beginning June 1, 1920 or such extended date as hereinafter provided for and ending twelve months thereafter and during each subsequent year except as hereinafter provided for in Section Nine (9) until the expiration or other termination of this contract, 14,000 kilowatts but not more than 61,320,000 kilowatt hours per year. Nothing in this contract contained shall be construed to obligate Wateree Company to at any time furnish a peak in excess of 14,000 kw,

"SECOND: The electric power and energy to be delivered hereunder shall be of the character commonly known as three-phase, alternating at approximately 60 cycles per second periodicity, and at approximately 105,000 volts, with the right upon the part of said Yadkin Company from time to time to vary said voltage whenever it wishes within the safe limits of the Wateree Company's generating and transforming apparatus. The Yadkin Company agrees to build and maintain, at its own cost and expense, on or before the first day of June, 1919, and to connect to the circuit of the Wateree Company, at said point of delivery, an electric transmission line with conductors not smaller than number naught Brown & Sharpe guage copper or equivalent, arranged for three-phase, sixty cycle circuit, and with insulation suitable for standard voltage of approximately 105,000 volts. Each of the parties agrees to erect at the aforesaid point of delivery a dead-end strain tower equipped with suitable line disconnecting switches.

(425) "It is understood and agreed, however, that should Yadkin Company desire to have any portion of the power and energy to be supplied hereunder delivered at the generator bus bar voltage of the Wateree Plant, then in such event Wateree Company agrees to furnish such portion of the above specified amount of power and energy as may from time to time be required by Yadkin Company at the generator bus bar voltage of the Wateree Station, said power to be delivered and metered to Yadkin Company at some convenient point immediately adjoining the Wateree Station, and adjacent to the above mentioned point of delivery, at which point Wateree Company shall furnish, without charge, sufficient ground space for such substation structure, transformers, switches, and other necessary or desirable apparatus or appliances, as Yadkin Company may desire to install. Said low voltage power and energy shall be transformed by Yadkin Company at or near point of delivery through suitable transformers, it being understood and agreed that said power shall not be delivered directly to any transmission or distribution line of Yadkin Company, without such transformation. Wateree Company agrees that said lower voltage power and energy shall be delivered under the same terms and conditions, and at the same price as provided hereunder for delivery of power and energy at 105,000 volts, and that its operators at Wateree Station shall without charge attend said substation and apparatus of Yadkin Company located at this point, and shall obey the reasonable instructions of Yadkin Company with regard to operation of said substation, transformers, switches, etc. Yadkin Company shall at all times have access to premises of Wateree Company for inspection, operation or repair of said substation apparatus installed on Wateree Company's premises.

"Yadkin Company agrees at its own cost to equip its transmission line to be erected hereunder, with a suitable telephone circuit.

"FOURTH: The maximum amount of power and energy which the Wateree Company shall be required to furnish hereunder during any week from Saturday mid-night to Saturday mid-night, except as hereinafter pro-

(426) vided in Sections Nine (9) and Ten (10), shall be 631,731 kilowatt hours during the year beginning June 1, 1919, or such extended date as hereinafter provided for and ending twelve months thereafter; and 1,179,231 kilowatt hours during the year beginning June 1, 1920 or such extended date as hereinafter set out, and ending twelve months thereafter, and during each subsequent year thereafter except as provided for in Section Nine (9) hereafter until the expiration or other termination of this contract; and for the purpose of supplying the power herein contracted for, the Wateree Company agrees to operate for the Yadkin Company hydraulic and electrical apparatus capable of delivering at any and all times the full amount of kilowatts which the Yadkin Company may then be entitled to receive at the point of delivery at 80% power factor. The Wateree Company agrees that it will so arrange, either through operation or separate generating and transforming apparatus for Yadkin Company, or otherwise, that the Wateree Company may respond promptly to any reasonable change in voltage frequency, or other operating condition of the Yadkin Company, which said Wateree Company may be called upon by said Yadkin Company to meet, provided however, that the Wateree Company shall in no event be required to furnish a greater voltage than 110,000 volts; and provided further that should the Wateree Company find it necessary or desirable to operate its station in parallel it may so do and in such event the Yadkin Company agrees to install if necessary to give it the voltage it requires all such apparatus as may be necessary to obtain such voltage and said Yadkin Company assumes all responsibility for said apparatus performing its functions if the same is operated by the employees of the Wateree Company in accordance with instructions of the Yadkin Company which said instructions the Wateree Company agrees to follow;

"In the event Yadkin Company should install regulating apparatus the Wateree Company hereby agrees to furnish suitable space adjacent to transformers outside the building for the installation of such apparatus on the low tension side of the energy to be supplied hereunder provided such space shall not exceed fifteen feet by fifteen feet square and twenty feet in height and shall

(427) also provide sufficient space for the installation of necessary bus bars and disconnecting switches, which may be necessary in the installation and operation of said voltage regulating apparatus. Wateree Company agrees, however, that in any event it will at times of parallel operation of its plant furnish a voltage of not less than 100,000 volts.

"The Wateree Company shall not be obligated to supply to the Yadkin Company during any seven days, the said amount hereinbefore specified for seven days in a less period of time than One Hundred and Forty-Four consecutive hours, nor more than 105,288 kilowatt hours in any Twenty-four (24) consecutive hours during the year beginning June 1, 1919 or such extended date as hereinafter provided for and ending twelve months thereafter, except as hereinafter provided in Sections Nine (9) and Ten (10), nor more than 196,538 kilowatt hours in any Twenty-four (24) consecutive hours during the year beginning June 1, 1920 or such extended date as hereinafter provided for, and ending twelve months thereafter, and during each subsequent year until the expiration or other termination of this contract, except as provided for in Section Nine (9).

"Nothing in this agreement shall be construed as authorizing the Wateree Company to operate its apparatus only at an 80% power factor, but it is understood and agreed that the Wateree Company may operate such apparatus at the highest practicable power factor. The Wateree Company agrees to use such standard type of generating and transmission apparatus, and so far as it is reasonably able so to do, to select and operate the receiving and rotating apparatus on its system so as to (a) avoid so-called 'hunting' of synchronous apparatus, and so as to (b) maintain as far as commercially practicable, the power factor of unity. It is agreed that should the power factor on the system of the Yadkin Company be less than 80%, the Wateree Company shall be entitled, during such time, to payment on the kilowat ampere basis of 80% power factor instead of on a kilowatt hour basis.

EIGHTH: Subject to the provisions of this contract,

(428) the Yadkin Company agrees to pay the Wateree Company for the electric power and energy supplied under the terms of this contract during the year beginning June 1, 1919 or such extended date as hereinbefore provided for, and ending twelve months thereafter, except as hereinafter provided in Section (9), the sum of One Hundred Fourteen Thousand and Nine Hundred Seventy-five Dollars ($114,975); and during the year beginning June 1, 1920 or such extended date as hereinbefore provided for and ending twelve months thereafter and during each subsequent year for a period of 18 years, except as provided for in Section Nine (9), the sum of Two Hundred Fourteen Thousand Six Hundred and Twenty Dollars ($214,620), and during the year beginning June 1, 1939 or such extended date as hereinbefore provided for, and ending twelve months thereafter, and during each subsequent year thereafter until the expiration or other termination of this contract, except as provided for in Section Nine (9), the sum of Two Hundred Forty-five Thousand Two Hundred Eighty Dollars ($245,280), payable for each year in twelve monthly installments, each of which installments shall be computed as follows: For the year beginning June 1, 1919 or such extended date as hereinbefore provided for and ending twelve months thereafter except as hereinafter provided in Sections Nine (9) and Ten (10), on a basis of Three Hundred and Fifteen Dollars ($315) per day, multiplied by the number of days in the month, for which such installment shall be paid; and for the year beginning June 1, 1920 or such extended date as hereinbefore provided for, and ending twelve months thereafter and for each subsequent year thereafter for a period of (18) eighteen years, except as provided for in Section Nine (9), on a basis of Five Hundred Eighty-eight Dollars ($588) per day, multiplied by the number of days in the month for which such installment shall be paid; and for the year beginning June 1, 1939 or such extended date as hereinafter provided for, and ending twelve months thereafter, and for each subsequent year thereafter, except as provided for in Section Nine (9), until the expiration or other termination of this contract, on a basis of Six Hundred Seventy Two Dollars ($672) per day, multiplied by the number of days in the month for which such installment shall be paid; and so long as the Wateree Com-

(429) pany shall deliver or shall be ready, willing and able to deliver the said full amount of power, the Yadkin Company shall pay for the full said amount of power on the basis specified in this section whether it shall have used the same or not, except as provided for in Section Nine (9); provided that in event Wateree Company in any Twenty-four (24) consecutive hours furnishes to Yadkin Company and the Yadkin Company receives a greater number of kilowatt hours than the daily contract amount specified hereunder, then Yadkin Company shall pay Wateree Company for such excess amount at the rate of Thirty-five one hundredths of a cent (.35¢) per kilowatt hour during a period of twenty (20) years from the date power shall first begin to be delivered hereunder and at the rate of Forty one-hundredths of a cent (.40¢) during the remaining period of the contract."

DEFENDANTS' EXHIBIT 44

Defendants introduced in evidence as their Exhibit 44 a statement of undeveloped power sites held by Duke Power Company in North Carolina, South Carolina and Georgia, with the cost of said sites, as follows:

Name of Development	Cost Per Ledger Balances April 30, 1935
Glen Alpine	195,826.51
Morganton	409,765.51
Johns River	426,092.35
Upper Mountain Island	1,680,711.00
Lansford	389,653.02
Toxaway	138,015.83
Haw River Shoals	43,367.28
Palmer Shoals	356,031.37
Middleton Shoals	742,047.76
Calhoun Falls	424,077.90
Total	4,805,588.53

(430) **DEFENDANTS' EXHIBIT 45.**

List of Plaintiffs' Former Customers

Those who were heretofore customers of the plaintiffs in the three counties, but who are not now, are as follows:—Lydia Cotton Mills, Clinton Cotton Mills, Town of Clinton, and Panola Cotton Mills.

DEFENDANTS' EXHIBIT 46.

Defendants introduced in evidence as their Exhibit 46 report on the electric utilities situation in South Carolina, dated December 31, 1931. Plaintiffs duly objected to the introduction of this report in evidence on the ground that it is irrelevant, incompetent and immaterial and that it is hearsay.

Subject to said objection of plaintiffs it is agreed that it shall be admissible for either party to present a copy of this exhibit, certified by the Clerk of the U. S. District Court, to the Circuit Court of Appeals at the time of the argument.

DEFENDANTS' EXHIBIT 47.

Defendants introduced in evidence as their Exhibit 47 Report of Federal Trade Commission on Duke Power Company and constituent system companies, the summary of said report, as given therein, being as follows:

SUMMARY OF REPORT ON DUKE POWER COMPANY

The Duke Power Company was incorporated under the laws of the State of New Jersey as Wateree Electric Company on May 1, 1917. In 1924 the charter was amended and the name changed to Duke Power Company. From 1917 until December 1, 1927, the principal operations of the company consisted of holding the capital stocks of subsidiary companies. Prior to December

(431) 1, 1927, the principal operations of the Duke power system were conducted by Southern Power Company, Catawba Power Company, Great Falls Power Company, Wateree Power Company and Western Carolina Power Company. During this period, Southern Power Company acted in the capacity of the principal operating unit of the system. It owned the transmission system and certain generating plants and purchased the power generated by the plants of the other companies. It then transmitted this power and sold the same at wholesale rates to municipalities, industries and other distributing companies.

The aforementioned companies were organized by the Duke interests and their stocks were held largely by James B. Duke and his associates. During the period from 1917 to 1925 the Duke Power Company acquired the capital stocks of the system companies owned by Mr. Duke and his associates, and they in turn subscribed to stocks of Duke Power Company.

The principal retail distribution operations of the Duke system have been conducted since 1913 through Southern Public Utilities Company. This company was organized in 1913 by the Duke interests and acquired from other system companies the retail distribution systems then owned, which were located in the States of North and South Carolina. The capital stocks of Southern Public Utilities Company were held by James B. Duke and his associates until 1925. During this year Duke Power Company offered to acquire the common stock of Southern Public Utilities Company by exchanging 1.4 shares of its common stock for each share of Southern Public Utilities Company. Through this offer, and some sundry purchases for cash, all of the outstanding common stock of Southern Public Utilities Company was acquired.

As of December 1, 1927, Southern Power Company and Great Falls Power Company were merged with the parent company, Duke Power Company. At about this time, Duke Power Company acquired the operating plants and facilities of the other subsidiary companies except those of Southern Public Utilities Company. The consideration involved in the acquisition of these assets

(432) was the cancellation of the capital stocks held by the parent company. Stated differently, Duke Power Company, as of December 1, 1927, either through merger or acquisition, took over all of the businesses of its subsidiary companies except those of Southern Public Utilities Company. From that date on, it has operated as both a holding and operating company. However, its principal operations consisted of the generation, transmission, and sale of electric power at wholesale rates. This consolidation of properties eliminated a number of companies and unified under a single operating unit the operations of the former subsidiary companies.

The generating facilities consist of 19 hydro plants with an installed capacity of 415,120 kilowatts and 5 steam plants with an installed capacity of 265,000 kilowatts. The distribution system, as of December 1, 1933, consisted of 2,762 miles of transmission lines, ranging from 550 to 115,000 volt capacity, together with the necessary substations and switching equipment. The total circuit miles of transmission lines amounted to 4,187. The history of the Duke power system is one of continued expansion and development. Largely through construction, but with some acquisitions, the Duke Power Company as now constituted has grown from an original investment of $1,418,730 in 1903 to a total of $184,000,000, as of December 31, 1933.

In addition to the installed capacity, the Duke Power Company leases one-half of the steam capacity of the Parr Shoals station of the Broad River Power Company and the Mountain Island hydro station of Southern Public Utilities Company. It also purchases power in large blocks from Carolina Aluminum Company, Lexington Water Power Company, Spartanburg Water Works and Lockhart Power Company. It also has a power exchange agreement with Carolina Power and Light Company.

During the year 1932, the system handled a total of 1,650,500,000 kilowatt hours of electric energy. Of this amount it generated 1,320,400,000 kilowatt hours and purchased 330,100,000 kilowatt hours. During this year it sold to domestic, commercial and unclassified users, 304,800,000 kilowatt hours; to non-affiliated public utility

(433) companies 78,800,000 kilowatt hours; to industrial users 887,200,000 kilowatt hours, and to municipalities 67,900,000 kilowatt hours.

On the basis of the 1932 business, the Duke Power Company ranks sixth among the hydro-electric systems of the United States and the first in the South.

The total capitalization of the Duke Power Company, on December 31, 1933, amounted to $141,288,708 and consisted of $40,000,000 principal amount in bonds, $283,811 par value preferred stock and $101,004,897 par value common stock. The original capitalization of the company amounted to $3,700,500 on May 18, 1917 and had increased to $141,288,000 on December 31, 1933. With the exception of $20,000,000 principal amount of bonds, none of the financing of the Duke Power Company has been done through public offering. All of the securities issued with the exception of the aforementioned amount were subscribed to by James B. Duke and his associates and by employees of the company, or were accepted in exchange for other securities.

The outstanding common stock of the Duke Power Company on March 1, 1933, was held in rather large lots. Stockholders owning 1,000 shares or more accounted for 927,864 shares out of the 1,010,048 shares outstanding. This amounted to 91.8 per cent of the total outstanding. Of the total outstanding, 792,882 shares, or 78.5 per cent, were owned by members of the Duke family, their estates, or trusts created by them. The largest single stockholder was the Duke Endowment which owned 371,076 shares. The second largest stockholder was the Doris Duke Trust which owned 141,488 shares.

What later developed into the Duke power system began with the organization of the Catawba Power Company in 1900. This company was organized by W. Gill Wylie and associates, to build a hydro-electric plant of 6,800 kilowatt capacity, on the Catawba River, near Rock Hill, South Carolina. Doctor Wylie interested James B. Duke and B. N. Duke in this enterprise and the project was successfully completed and placed in operation in March, 1903.

(434) At or about the time Mr. Duke became interested in the development of hydro-electric power, W. S. Lee was engaged as an engineer. From that time, until his death in March, 1934, Mr. Lee served as a vice-president and chief engineer.

After completion of the Catawba Plant, Mr. Duke and associates laid the plans and caused engineering studies to be made, with a view to developing a unified electric system to serve the western sections of North and South Carolina. The Catawba River offered a most suitable site for such a development, but due to meager natural storage, the problem was not a simple one. The river flow was of a widely fluctuating nature ranging from sudden and destructive heavy flow discharges to low discharges due to prolonged droughts. The least expensive method of developing the water powers of the river, would have been to build low-head plants on the most economical sites. This, however, would have utilized only a small portion of the total available power, and was not favored. Instead, Mr. Duke and associates worked on the basis that to truly develop and conserve this natural resource, every foot of available head must be developed, together with storage reservoirs and auxiliary steam plants. This plan was adhered to and the system as it exists today resulted from continuous engineering studies and operating experiences.

In a statement submitted to the Railroad Commission of South Carolina, Mr. Lee stated that the development of hydro-electric power on a large scale during this early period was truly a pioneering enterprise requiring far-sighted vision, faith in the future of the territory and financial courage. He further stated that it was now difficult to realize that in the early days of this system's operations, the development of hydro-electric power and high voltage transmission were still in the experimental stage. Only the largest cities enjoyed the advantage of electric service and in most cases this was furnished by isolated, inadequate and inefficient plants. The few textile mills in the piedmont section at this time were equipped with mechanical drives operated either by steam engines or by hydraulic turbine drives operated from small and wasteful water power developments.

(435) Another major problem confronting the system in the early years was the development of a market for electric power. The textile manufacturers were skeptical about the use of electric power for the manufacture of cotton goods and distrusted the use of transmission lines for the efficient delivery of power. Electrification involved considerable expense as well as the discarding of their existing power plants; therefore, contracts for the sale of power were made with great difficulty. To educate the industry in the use of electric power and to help in the promotion of new industries, James B. Duke contributed not only his time and efforts but he personally subscribed for shares of stock in various manufacturing enterprises, and in many cases after these enterprises became successful he sold the shares back to the organizer at cost.

In this statement Mr. Lee further stated that a very important factor in the history of the system's development was the low cost of its construction. Part of this feature was due to the simplicity and economy of design but a mort important factor was the active interest and financial support of James B. Duke. The latter was in touch with world-wide economic conditions, and being a believer in long time planning, he timed the purchase of equipment and materials and the placing of construction contracts, so as to gain the advantage of low price market conditions. In fact the records indicate that with a few exceptions, all major equipment and construction contracts were placed during depression periods.

During the period that the Catawba Plant was being built, the American Development Company was acquiring other lands and sites on the Catawba River. After the American Development Company completed certain of these acquisitions, these lands and water rights and a demand note of $118,598 together with the capital stocks of C. awba Power Company and $1,096,795 in cash were transferred to Southern Power Company in consideration for the issuance to it of 20,000 shares of preferred stock and 39,990 shares of common stock of the latter. Although the books and records of the American Development Company were not available for examination, it was apparent that the proceeds of the 20,000 shares of

(436) preferred stock were sufficient to approximately cover the cash cost of the assets acquired by Southern Power Company. This is evidenced by the fact that Southern Power Company after charging out the lands and water rights to construction projects, reflected an undistributed balance of $3,617,647, which was later classified as Good-will.

From these facts, it will be observed that the Good-will really amounts to excess par value of securities issued over and above the cost of the lands and water rights acquired.

After the acquisition of these lands and water rights, Southern Power Company built hydro-electric plants on certain of the sites. On March 1, 1910, the Rocky Creek, Ninety-Nine Islands and Great Falls plants were conveyed to a newly organized company named Great Falls Power Company. The apportioned costs of these plants to Southern Power Company amounted to $5,228,145. These plants, lands, water rights and other assets were conveyed to Great Falls Power Company in consideration for the preferred and common stocks of the latter. The plants, together with the lands and water rights received were entered by Great Falls Power Company at a ledger value of $10,360,719, or at a write-up of $5,132,574 in excess of the cost of Southern Power Company. Both companies involved were controlled by the same interests.

On March 1, 1910, Southern Power Company sold other real estate and water rights and paid $20,000 cash to Wateree Power Company in consideration for $2,500,000 par value of its common stock. The assets acquired by the Wateree Power Company has been carried on the books of the Southern Power Company at a cost of $616,173.66. These assets were set up by Wateree Power Company at a value equal to the par value of the stock issued, or $2,480,000, and at a write-up of the water rights and real estate, in the amount of $1,863,826.34.

After acquiring these lands and water rights, Wateree Power Company proceeded with the construction of the Fishing Creek Plant. When completed, the plant

(437) was sold to Wateree Electric Company (now Duke Power Company) at cost, as shown by Wateree Power Company's books. The latter owned the plant until December 15, 1922, at which time it was transferred to a newly organized company called Fishing Creek Power Company. The depreciated ledger value of the plant at the date of transfer amounted to $1,500,155.36 and was set up by the new company at $3,167,318.30, or at a write-up of $1,667,162.94. The write-up was made to provide for the excess par value of common stock issued to Wateree Electric Company over and above the cost to that company.

As of August 31, 1925, the Fishing Creek Power Company was dissolved and the plant was again owned by Wateree Power Company. The plant was owned by the latter company until 1927, when it was taken over by Duke Power Company along with the other plants of Wateree Power Company. An additional write-up of the Fishing Creek Plant was made at August 31, 1925 by Wateree Power Company to equal the par value of the stock issued and amounted to $1,190,593.87. Thus the total write-up in the Fishing Creek Plant by all the companies owning the plant was $2,857,756.81.

As of August 31, 1923, the various companies of the Duke power system caused an appraisal to be made of their physical properties. Two appraisals were made; one by J. E. Sirrine and Company, of Greenville, South Carolina, and the other by W. S. Lee, consulting engineer, of Charlotte, North Carolina. Mr. Lee was also a vice-president and chief engineer of these companies.

After the appraisals had been completed, the individual companies took the average of the appraisal depreciated value as representing the fair value of the property on the appraisal date. The depreciation reserves set up on the properties were cancelled and the properties were recorded on the books of the companies at the appraised value. The total write-up resulting from the appraisal of the properties amounted to $20,320,334.34. As previously stated, Duke Power Company took over the operating property of the system companies. The properties were recorded by the Duke Power

(438) Company at their ledger value; therefore, all write-ups made by the system companies are now reflected on the books of the Duke Power Company.

The write-up through the appraisal of the properties and other write-ups previously enumerated amounted to $30,689,577.82, as of August 31, 1923. This total write-up has been adjusted at various times to provide for the elimination of write-up on properties retired. When property is retired, surplus is charged with the amount of write-up eliminated. Allowing for these adjustments, it was found that there remained in the fixed capital accounts of the Duke Power Company a total write-up of $29,667,135.60 as of December 31, 1933. Although it is a fact that the properties were appraised and written up, yet it must be noted that the increase in ledger value was not employed as a basis for issuing and selling securities to the public.

The surplus created from writing up the properties was employed as a basis for issuing stock dividends. Duke Power Company, as the principal stockholder of the underlying companies, therefore received the majority of these stock dividends. The stock dividends received were valued at par or issue value and recorded as surplus of Duke Power Company. Duke Power Company then in turn issued stock dividends of its own from the surplus so created. Duke Power Company also created other surplus from the valuation of investments in certain stocks. These stocks had been acquired at less than par value thereof and were written up to equal the par value.

The total stock dividends issued by Duke Power Company amounted to $53,502,406.20 in par value. Of the total surplus from which these stock dividends were paid; $32,931,739.41 was created from the valuation of stock dividends received by Duke Power Company from subsidiary companies, from intercompany profits on exchange of securities, and from writing up securities to equal the par value thereof. The surplus from which the subsidiaries declared the stock dividends was largely created by writing up the fixed assets of those companies based on appraisals as of August 31, 1923, and this write-up on all companies amounted to $20,335,334.34.

(439) The principal income of the company has been derived from the sale of electric energy at wholesale rates to non-affiliated utilities, municipalities, industries and its affiliated distributing companies. Other income was received in the form of interest and dividends. Each dollar of gross revenue received by Duke Power Company during the six-year period from January 1, 1928 to December 31, 1933, was utilized for the following purposes: operating expenses 28.48 cents, provision for depreciation 18.63 cents, provision for state, county and municipal taxes 9.26 cents, Federal income tax 3.72 cents, bond interest 10.84 cents, amortization of bond discount, .35 cents, leaving 28.72 cents of each dollar of gross revenue for the stockholders. Of the latter amount 26.37 cents was distributed in cash to the common stockholders, .11 cents in cash to the preferred stockholders and 2.24 cents was added to surplus.

During the period from August, 1927 to February 1930, considerable income was realized in the form of interest on call loans placed in the New York market through various New York banks. Some of these loans were placed for the account of the Duke Endowment, The Doris Duke Trust, Piedmont and Northern Railway Company and Durham and Southern Railway Company. For loans placed for these interests, the same amount of interest was paid as that received. The maximum amount of loans placed by the Duke Power Company for its own account and the other parties named, amounted to $14,400,000, as of January 31, 1928. The loans decreased during 1928 and until June, 1929, when they again reached considerable proportions, and amounted to $13,900,000 in September 1929. From this point they receded again, and were finally closed out in May, 1930.

The adequacy of the provision for depreciation is indicated by the fact that the provision exceeded the allowance by the Internal Revenue Department, for Federal income tax purposes, by more than a million dollars, per year during the years 1930 to 1933, inclusive. The company contended that its provision is justified in order to build up an ample reserve to provide: (1) the replacing of any portion of the property, the useful life of which has been terminated by physical deterioration, wear and tear, or accidental causes, (2) the replacing of

(440) inefficient and inadequate portions of the property to increase the safety, the reliability, and efficiency of the service, (3) the safeguarding of the integrity of the investment in the property against its eventual partial or total retirement as it becomes obsolete, inadequate, and no longer used or useful.

For the purpose of this report, rates of profit were computed on the corporate capital employed as shown by the company's books and as adjusted by the Commission's examiner after deduction of write-ups, intercompany profits and non-utility investments. The rates of profit for the years 1928 to 1933, inclusive were computed by the examiner, and the basis and method of calculations are shown by schedules contained in the report. The rates of profit for the years 1925, 1926, 1927 and 1934 were computed by the company on the same basis as employed by the Commission's examiner. The rates for these years, as determined by the company are shown but the schedules are not included in the report.

The annual rates of profit on the corporate capital employed, computed as described and on the basis of net income, both before and after deductions from income for the payment of Federal income tax, for the years 1925 to 1934, inclusive, were as follows:

Before Deduction for Federal Income Tax

Year	Per Books Return on Corporate Capital Employed (Per cent)	As Adjusted Return on Corporate Capital Employed (Per cent)
1925	3.50	5.82
1926	4.05	6.45
1927	5.56	8.09
1928	6.74	9.27
1929	6.53	9.13
1930	5.01	6.90
1931	4.61	6.19
1932	4.06	5.47
1933	4.40	5.96
1934	3.44	4.65

(441)

After Deduction for Federal Income Tax

Year	Per Books Return on Corporate Capital Employed (Per cent)	As Adjusted Return on Corporate Capital Employed (Per cent)
1925	3.11	5.17
1926	3.61	5.74
1927	4.93	7.17
1928	6.14	8.44
1929	5.99	8.37
1930	4.53	6.24
1931	4.28	5.75
1932	3.69	4.98
1933	4.01	5.43
1934	3.14	4.25

Rate of Profit on Common Stock Equity—Duke Power Company. The annual rates of profit earned on the common stock equity investment, calculated on the above described bases, were as follows:

Before Deduction for Federal Income Tax

Year	Per Books Return on the common stock equity (Per cent)	As Adjusted Return on the common stock equity (Per cent)
1925	3.33	5.92
1926	3.96	6.62
1927	6.66	11.13
1928	7.66	12.74
1929	7.23	12.24
1930	5.15	8.28
1931	4.51	6.88
1932	3.76	5.79
1933	4.24	6.57
1934	2.93	4.53

(442) After Deduction for Federal Income Tax

Year	Per Books Return on the common stock equity (Per cent)	As Adjusted Return on the common stock equity (Per cent)
1925	2.91	5.17
1926	3.48	5.81
1927	5.85	9.78
1928	6.70	11.22
1929	6.46	10.92
1930	4.48	7.21
1931	4.07	6.21
1932	3.27	5.03
1933	3.71	5.75
1934	2.53	3.91

Rate of Profit on Depreciated Fixed Capital—Duke Power Company. The annual rates of profit earned on the depreciated fixed capital were calculated on the same basis as that described under corporate capital employed. In addition, from the fixed capital, as adjusted by the Commission's examiner, there has been deducted the entire reserve for depreciation as recorded by the company. The basis on which these rates have been computed do not contain any allowance in the fixed capital for working capital. The resultant depreciated fixed capital as here computed is not intended to reflect a rate base, but is shown merely for purposes of comparison with return on corporate capital employed. Therefore, the rates of profit shown here do not contain all the elements included in a rate base, and the rates should not be construed to be the rates earned on the rate base determined by State regulatory bodies.

The rates of profit on the depreciated fixed capital, as per the company's books and before deductions from income for the payment of Federal income tax, were: 3.68 per cent, 1925; 4.05 per cent, 1926; 6.83 per cent, 1927; 8.43 per cent, 1928; 8.13 per cent, 1929; 5.93 per cent, 1930; 5.35 per cent, 1931; 4.49 per cent, 1932; 5.19 per cent, 1933; 3.81 per cent, 1934.

(443) The rates of profit on the depreciated fixed capital as adjusted by the Commission's examiner and before deductions from income for the payment of Federal income tax, were: 6.02 per cent, 1925; 6.31 per cent, 1926; 10.29 per cent, 1927; 12.57 per cent, 1928; 12.59 per cent, 1929; 9.08 per cent, 1930; 7.94 per cent, 1931; 6.62 per cent, 1932; 7.72 per cent, 1933; 5.75 per cent, 1934.

The rates of profit on the depreciated fixed capital as per the company's books and after deductions from income for the payment of Federal income tax, were: 3.25 per cent, 1925; 3.54 per cent, 1926; 6.01 per cent, 1927; 7.54 per cent, 1928; 7.34 per cent, 1929; 5.21 per cent, 1930; 4.87 per cent, 1931; 3.95 per cent, 1932; 4.61 per cent, 1933; 3.36 per cent, 1934.

The rates of profit on the depreciated fixed capital as adjusted by the Commission's examiner and after deductions from income for the payment of Federal income tax, were: 5.30 per cent, 1925; 5.51 per cent, 1926; 9.06 per cent, 1927; 11.25 per cent, 1928; 11.35 per cent, 1929; 7.98 per cent, 1930; 7.13 per cent, 1931; 5.82 per cent, 1932; 6.85 per cent, 1933; 5.06 per cent, 1934.

The decrease in earnings, and therefore rate of profit, was influenced by rate reductions and by loss of revenue due to general business conditions. The following reductions in rates have been made since 1928 and the estimated annual cost to Duke Power Company, based on previous years' sales was as follows:

Effective Date	Annual cost
December 1, 1928	$ 519,400.00
November 1, 1932	642,600.00
May 1, 1933	418,100.00
Sept. 1, 1934	725,000.00
March 1, 1935	206,800.00
Total	$2,511,900.00

The company officials stated that the above reductions were voluntary on the part of the company, except the one of September 1, 1934, which was based on a proposal

(444) by the company and agreed to by the Commission after a rate investigation had been conducted. In this connection, it should be noted that the effect of the last two reductions and part of the reduction of May 1, 1933, was not reflected in the sales covered by this report, which covered the period to December 31, 1933.

Rate of Profit on Corporate Capital—Duke Power Company (Consolidated)—As stated, Duke Power Company engaged principally in the generation, transmission and sale of electric energy at wholesale rates. Through subsidiaries, the common stock of which was entirely owned, it distributed electric current at retail rates to customers in various communities located in the States of North and South Carolina. The power distributed by the subsidiaries was obtained largely from Duke Power Company at an intercompany price which was the same as that obtained for power sold to non-affiliated distributors of a similar type. Because of this intercompany sale of power involving intercompany profits, the two operations have been consolidated for the purpose of this report; and all intercompany transactions eliminated.

Rates of profit were computed on the consolidated corporate capital employed as shown by the company's books and after deduction of write-ups, intercompany profits and non-utility investments, as determined by the Commission's examiner.

The rates of profit for the years 1928 to 1933, inclusive, were computed by the examiner, and the bases are shown by schedules contained in the report. The rates of profit for the years 1925, 1926, 1927 and 1934, were computed by the company on the same basis as employed by the Commission's examiner. The rates for these years, as determined by the company, are shown, but the schedules are not included in the report.

The annual rates of profit computed on these bases, and on the basis of net income, both before and after deductions for the payment of Federal income tax, for the years 1925 to 1934, inclusive, were as follows:

(445)

Before Deductions for Federal Income Tax

Year	Per Books Return on Consolidated Corporate Capital Employed (per cent)	As Adjusted Return on Consolidated Corporate Capital Employed (per cent)
1925	4.69	7.85
1926	4.62	7.64
1927	6.11	9.22
1928	7.50	10.50
1929	7.36	10.35
1930	5.64	7.77
1931	5.07	6.83
1932	4.33	5.86
1933	4.49	6.09
1934	3.78	5.14

After Deductions for Federal Income Tax

Year	Per Books Return on Consolidated Corporate Capital Employed (per cent)	As Adjusted Return on Consolidated Corporate Capital Employed (per cent)
1925	4.07	6.80
1926	4.09	6.77
1927	5.36	8.09
1928	6.86	9.60
1929	6.78	9.53
1930	5.10	7.03
1931	4.68	6.31
1932	3.92	5.30
1933	4.09	5.55
1934	3.45	4.70

Rate of Profit on Common Stock Equity—Duke Power Company, Consolidated. The annual rates of profit earned on the common stock equity investment, calculated on the above described bases, were as follows:

Before Deductions for Federal Income Tax

(446)

Year	Per Books Return on the Consolidated Common Stock Equity (per cent)	As Adjusted Return on the Consolidated Common Stock Equity (per cent)
1925	4.58	8.85
1926	4.50	8.47
1927	7.42	13.87
1928	8.96	16.67
1929	8.73	16.32
1930	6.04	10.66
1931	5.05	8.38
1932	3.91	6.55
1933	4.17	7.03
1934	3.11	5.24

After Deductions for Federal Income Tax

Year	Per Books Return on the Consolidated Common Stock Equity (per cent)	As Adjusted Return on the Consolidated Common Stock Equity (per cent)
1925	3.83	7.40
1926	3.87	7.29
1927	6.38	11.94
1928	7.92	14.74
1929	7.80	14.59
1930	5.19	9.16
1931	4.45	7.39
1932	3.27	5.48
1933	3.55	5.99
1934	2.60	4.38

Rate of Profit on Consolidated Depreciated Fixed Capital—Duke Power Company. The annual rates of profit earned on the consolidated depreciated fixed capital were calculated on the same basis as that described under corporate capital employed. In addition, from the

(447) fixed capital, as adjusted by the Commission's examiner, there has been deducted the entire reserve for depreciation as recorded by the company. The bases on which these rates have been computed do not contain any allowance in the fixed capital for working capital. The resultant consolidated depreciated fixed capital as here computed is not intended to reflect a rate base, but is shown merely for purposes of comparison with return on consolidated capital employed. Therefore, the rates or profit shown here do not contain all the elements included in a rate base, and the rates should not be construed to be the rates earned on the rate base determined by the State regulatory bodies.

The rates of profit on the consolidated depreciated fixed capital, as per the company's books and before deductions from income for the payment of Federal income tax, were: 4.63 per cent, 1925; 4.65 per cent, 1926; 6.83 per cent, 1927; 8.22 per cent, 1928; 8.25 per cent, 1929; 6.38 per cent, 1930; 5.74 per cent, 1931; 4.86 per cent, 1932; 5.06 per cent, 1933; 4.14 per cent, 1934.

The rates of profit on the consolidated depreciated fixed capital as adjusted by the Commission's examiner and before deductions for the payment of Federal income tax, were: 7.62 per cent, 1925; 7.48 per cent, 1926; 10.42 per cent, 1927; 11.78 per cent, 1928; 12.08 per cent, 1929; 9.25 per cent, 1930; 8.06 per cent, 1931; 6.86 per cent, 1932; 7.18 per cent, 1933; 5.93 per cent, 1934.

The rates of profit on the consolidated depreciated fixed capital as per the company's books and after deductions from income for the payment of Federal income tax, were: 3.97 per cent, 1925; 4.11 per cent, 1926; 6.02 per cent, 1927; 7.51 per cent, 1928; 7.59 per cent, 1929; 5.75 per cent, 1930; 5.28 per cent, 1931; 4.37 per cent, 1932; 4.59 per cent, 1933; 3.74 per cent, 1934.

The rates of profit on the consolidated depreciated fixed capital as adjusted by the Commission's examiner and after deductions from income for the payment of Federal income tax, were: 6.54 per cent, 1925; 6.62 per cent, 1926; 9.19 per cent, 1927; 10.75 per cent, 1928; 11.13 per cent, 1929; 8.33 per cent, 1930; 7.42 per cent, 1931;

(448) 6.17 per cent, 1932; 6.52 per cent, 1933; 5.37 per cent, 1934.

The decrease in earnings, and therefore, rate of profit, was influenced by rate reductions and by loss of revenue due to general business conditions. The following reductions in rates have been made since 1928 and the estimated annual cost to the system based on previous years' sales was as follows:

Effective Date	Annual cost
December 1, 1928	$ 519,400
November 1, 1932	1,515,500
May 1, 1933	418,100
Sept. 1, 1934	1,335,000
March 1, 1935	118,500
	$3,906,500

The company officials stated that the above reductions were voluntary on the part of the company, except the one of September 1, 1934, which was based on a proposal by the company and agreed to by the Commissions after a rate investigation had been conducted.

In this connection it should be noted that the effect of the last two reductions and part of the reduction of May 1, 1933, was not reflected in the sales covered by this report, which covered the period to December 31, 1933.

DEFENDANTS' EXHIBIT 48.

Defendants introduced in evidence as their Exhibit 48 Report of Federal Trade Commission on Southern Public Utilities Company (subsidiary of Duke Power Company), the summary of said report, as given therein, being as follows:

SUMMARY OF REPORT ON

SOUTHERN PUBLIC UTILITIES COMPANY

This report covers the growth and operations of

(449) Southern Public Utilities Company from its organization in 1913 to December 31, 1933.

Southern Public Utilities Company is controlled by Duke Power Company and is the retail distributing company of the Duke Power System. The company operates in both North Carolina and South Carolina in what is known as the Piedmont Section. At the end of 1933, the company furnished electric service in 195 communities in 31 counties in North Carolina and 84 communities in 13 counties of South Carolina. In addition, gas service was furnished in 10 communities in both states, 3 communities were furnished with water service, and transportation service was furnished in 8 communities.

Southern Public Utilities Company operates 20 small hydro-electric generating stations with a total installed capacity of 25,057 kilowatts. One of the plants, the Gregg Shoals Plant, is leased from Georgia Power Company, an operating subsidiary of Commonwealth & Southern Corporation. In addition, the company owns a large hydro-electric generating plant on the Catawba River near Charlotte, North Carolina, which plant is leased to Duke Power Company for operation. This plant, designated as Mountain Island Station, has an installed capacity of 60,000 kilowatts.

Southern Public Utilities Company owned the transmission system connecting its various generating plants with the territory served, but otherwise the transmission lines supplying the distribution systems of the company were largely owned by Duke Power Company. The major portion of the company's electrical requirements are purchased from Duke Power Company, largely under the latter's established rate schedules.

At the end of 1933, Southern Public Utilities Company had 97,052 electric customers in North Carolina and 30,576 electric customers in South Carolina, or a total of 127,628 electric customers in both states.

Southern Public Utilities Company manufacturers and supplies coal, water, or butane gas in 7 communities in North Carolina and 3 communities in South Carolina. The company has 526 miles of gas mains, gas manufacturing plants with a total daily capacity of 6,706 M. C. F. and gas holders with a total capacity of 2,517 M. C. F.

(450) The fixed capital of Southern Public Utilities Company as recorded at organization, July 1, 1913, amounted to $6,889,478. It stood at $53,529,958 as of December 31, 1933, an increase of $46,640,480 during the intervening twenty-year period since organization. Purchases of property accounted for $34,880,222 of the increase and the remaining $11,760,258 represented new construction less retirements.

Southern Public Utilities Company on July 1, 1913 issued $3,500,000 par value of common stock, $1,750,000 principal amount of bonds, and assumed $1,789,500 principal amount of underlying bonds making its total outstanding capital liability $7,039,000. By the end of 1933 the total outstanding capital liability had increased to $42,719,700 as shown by the following:

	Outstanding		
Security	July 1, 1913	Dec. 31, 1933	Increase
Common Stock	$3,500,000	$21,000,000	$17,500,000
Bonds	1,750,000	16,487,000	14,737,000
Underlying Bonds	1,789,000	5,232,100	3,443,100
Totals	$7,039,000	$42,719,100	$35,680,100

The bonds were issued or assumed in connection with acquisition of utility properties by Southern Public Utilities Company. A majority of the common stock was issued in the same connection although $6,000,000 par value was issued as stock dividends.

The following table shows the comparative growth of the fixed capital and capital liabilities of Southern Public Utilities Company at intervals from July 1, 1913 to December 31, 1933:

Date	Fixed Capital	Capital Liabilities
July 1, 1913	$ 6,889,478	$ 7,039,000
June 30, 1915	10,698,453	9,983,000
June 30, 1920	14,134,523	12,110,500
June 30, 1925	22,906,701	20,704,500
June 30, 1930	37,558,137	38,542,000
Dec. 31, 1933	53,529,958	42,719,100

(451) With the growth of the fixed capital investment of Southern Public Utilities Company, there was a corresponding growth in gross operating revenues from $1,182,519 for the 12 months ended June 30, 1914 to $12,718,089 for the year ended December 31, 1933, an increase of $11,535,570. In the same manner the net operating income increased from $414,932 for the 12 months ended June 30, 1914, to $2,282,030 for the year ended December 31, 1933. Likewise net corporate income available for dividends on common stocks increased from $224,275 to $963,092 for the same fiscal years.

Southern Public Utilities Company was incorporated under the laws of the State of Maine, on March 8, 1913. It was organized by the Duke interests, J. B. Duke, B. N. Duke and their associates, to acquire the properties of various public utility operating companies controlled by Southern Power Company and J. B. Duke. Southern Power Company also was controlled by the Duke interests. The properties were acquired through an intermediary and in payment, Southern Public Utilities Company issued $1,750,000 principal amount 5% first refunding mortgage bonds and $3,500,000 par value common stock, and assumed $1,789,000 principal amount underlying bonds, an aggregate consideration of $7,039,000. The bonds and stock issued by Southern Public Utilities Company were offered to the stockholders of Southern Power Company on the basis of $1,000 face value in bonds and $2,000 par value common stock for $1,210, or $2,117,500 for the total $1,750,000 principal amount bonds and $3,500,000 par value common stock. The proceeds were used to reimburse Southern Power Company and J. B. Duke for the properties transferred to Southern Public Utilities Company.

The properties acquired were set up at values reflecting the total par or face value of the stock and bonds issued in payment. Consequently, the recorded value of the properties included capitalized stock and bond discount amounting to 3,132,500. Since the cash proceeds of the stock and bonds represented the actual cost of the properties, the capitalized discount also represented a write-up of the fixed capital acquired by Southern Public Utilities Company. In addition to capitalized discount, the recorded value of the properties acquired reflected

(452) profits amounting to $512,016 recorded by Southern Power Company and Catawba Power Company in the transfer of the properties. This increased the write-up in the fixed capital acquired at organization by Southern Public Utilities Company to $3,644,516.

However, the write-up would be reduced by the undistributed earnings, if any, of the properties during the period of control by Southern Power Company, which amount was not available.

In 1914, Southern Public Utilities Company purchased certain street railway properties through an intermediary for an aggregate cost of $3,000,000. In payment the company issued $1,500,000 principal amount 5 per cent first and refunding bonds and $1,500,000 par value common stock. The bonds were issued to Southern Power Company in payment for the railway property acquired from that company. The latter sold the bonds at 91 per cent of face value, or at a discount of $135,000, and recorded in addition, a profit of $216,794. The total discount and profit amounting to $351,794 was reflected in the recorded value of the railway properties acquired by Southern Pacific Utilities Company. The common stock issued was offered to the stockholders of Southern Public Utilities Company at $25 per share, or an aggregate discount of $1,125,000. Likewise, this stock discount was reflected in the recorded value of the railway properties. Consequently, the recorded value of the railway properties acquired reflected a write-up of $1,458,364, after deducting a small subsequent adjustment, as a result of the capitalized profits to affiliated interests and stock and bond discounts.

Southern Public Utilities Company, as of January 1, 1917, merged its subsidiary, Greenville-Carolina Power Company. The transaction was effected through sale of the investment in that company consisting of common and preferred stocks to an intermediary and purchase from the latter of the property and other assets of Greenville-Carolina Power Company. In consideration for the property acquired, Southern Public Utilities Company issued $1,000,000 par value of common stock and $286,000 principal amount of bonds, in addition to assuming the

(453) outstanding funded debt of $274,000 principal amount. The stock and bonds issued were sold at a discount of $925,740 for cash, which was used to retire the outstanding preferred stock of Greenville-Carolina Power Company. The stock and bond discount was capitalized on the books of Southern Public Utilities Company and reflected in the recorded value of the property acquired.

In 1923, Southern Public Utilities Company purchased a hydroelectric generating station known as the Mountain Island Plant, from Catawba Manufacturing and Electric Power Company, which was controlled by the Duke interests. In consideration for the plant, the company paid $4,300,000 in cash and issued $2,000,000 par value common stock. The actual construction cost of the plant was $5,257,079. The stock issued in part payment was offered to the stockholders of Southern Public Utilities Company at $50 per share, or total cash proceeds of $1,000,000. The discount, which likewise amounted to $1,000,000, was capitalized in the recorded cost of the plant on the books of Southern Public Utilities Company.

In 1927, Southern Public Utilities Company purchased through Wateree Power Company, another Duke company, certain properties, certain securities of South Carolina Gas and Electric Company, and the common stock of North Carolina Public Service Company from Broad River Power Company and General Gas and Electric Corporation, both of which were controlled by the Barstow interests. The aggregate consideration was $4,569,309.54, of which $1,407,771.50 was applied to the securities of South Carolina Gas and Electric Company, $1,164,119.84 was applied to the common stock of North Carolina Public Service Company and the remaining $1,997,418.20 was applied to the physical properties and other assets received.

Southern Public Utilities Company subsequently, on December 31, 1928, acquired, the property of South Carolina Gas and Electric Company through a mortgage foreclosure sale. Also, the property of North Carolina Public Service Company was subsequently merged on July 1, 1932.

In addition to the foregoing properties, Southern

(454) Public Utilities Company has acquired numerous other properties from other corporations, individuals and municipalities. The aggregate fixed capital purchase amounted to $41,930,731 which included total write-ups of $7,029,208.00. Eliminating the total write-ups leaves $34,901,523 as the actual cost of the purchased properties. The total write-up represented about 20.1 per cent of the aggregate actual cost.

In connection with the electric distributing systems purchased it might be noted that the company upon acquisition of property changed the existing rates to conform with its own established rate schedules which were generally lower.

Although most of the company's fixed capital was purchased some of it was constructed. Contrary to the usual practices, Southern Public Utilities Company did not charge overheads such as interest and taxes to the cost of new construction.

The company's reserve for renewals and retirements as of December 31, 1933 amounted to $12,216,730. This reserve was provided to take care of all losses sustained upon retirement of property as the result of depreciation, obsolescence, or for any cause whatever. However, as the charges against the reserve were relatively small, it does not appear that the company has used the reserve fully to the extent for which it was intended. Since the reserve amounted to 22.8 per cent of fixed capital as of December 31, 1933, it appears ample for the purposes for which it has been used.

As of December 31, 1933, the capital liabilities of Southern Public Utilities Company consisted of $21,000,000 par value common stock, $16,487,000 principal amount first and refunding mortgage 5% gold bonds, and $7,348,600 principal amount underlying bonds, an aggregate of $44,835,600. However, $2,116,500 principal amount underlying bonds were held in the treasury of the company so that the outstanding underlying bonds amounted to $5,232,100 and the outstanding capital liabilities amounted to $42,719,100.

Southern Public Utilities Company issued $8,000,000

(455) par value common stock in part payment for securities and properties of public utility operating companies, $7,000,000 par value common stock for cash and $6,000,000 par value as stock dividends, or $21,000,000 par value common stock from organization to December 31, 1933. The company issued $3,536,000 principal amount first and refunding mortgage bonds at face value in part payment for properties acquired and $12,951,000 principal amount for $12,194,640, in cash, to reimburse itself for new construction and properties purchased. The discount on the bonds issued for cash was $756,360, all of which except $990 was charged to unamortized debt discount and expense, to be amortized over the life of the bonds. However, in addition, there was an actual cash discount of $335,740 on the bonds issued at face value for properties which discount was capitalized in the recorded values of the properties acquired.

In addition to its own properties Southern Public Utilities Company operates under lease agreement the properties of Salisbury and Spencer Railway Company which it controls. Under the lease agreement, Southern Public Utilities Company receives all of the income and pays all the expenses, including the interest on the bonds outstanding. The investment in the company consists of 3,958 shares of common stock, $175,000 principal amount first mortgage bonds and $261,000 principal amount second mortgage bonds, and is carried at a ledger value of $826,205.

The income of Southern Public Utilities Company was derived principally from its electric operations, although gas, water and transportation operations furnished a substantial portion of the revenue of the company. For the entire period from July 1, 1913, to December 31, 1933, electric operating revenues amounted to $78,104,297, or 65.7 per cent of total operating revenue. During the same period gas operating revenue amounted to $11,643,419, or 9.8 per cent of total revenue. The revenue from water, railway and bus operations during the same period amounted to $19,960,945, or 16.8 per cent of total operating revenue. Rent from lease of electric plant during the same period amounted to $6,742,727, and revenue from merchandising and jobbing amounted to $2,387,549. The total operating revenue

(456) during the period from July 1, 1913 to December 31, 1933 amounted to $118,838,937 and other income amounted to $1,792,647, or total revenue from all sources of $120,631,584.

Operating expenses during the period from July 1, 1913 to December 31, 1933, amounted to $87,923,662, which was 74 per cent of total operating revenue. Interest and other deductions from gross income amounted to $11,752,140, or 9.7 per cent of total revenue for the entire period. After deduction of Federal income taxes amounting to $2,581,266, there remained available for dividends $18,374,516, or 15.3 per cent of total revenue during the entire period from July 1, 1913 to December 31, 1933.

The principal source of revenue from electric operations was from the sale of electric energy to residential and commercial customers. During the 5-year period from July 1, 1928 to June 30, 1933, Southern Public Utilities Company sold 425,39[illegible],820 kilowatt hours to residential and commercial customers for an aggregate revenue of $23,030,763, or an average revenue of 5.41¢ per kilowatt hour. The kilowatt hours sold to residential and commercial customers amounted to 32.19 per cent of the total kilowatt hours sold during the 5-year period, and the revenue therefrom represented 59.34 per cent of the total revenue from electric sales during the same period. Sales to power customers amounted to 810,062,976 kilowatt hours and the revenue received therefrom was $13,207,900, an average revenue of 1.63¢ per kilowatt hour. While the kilowatt hours sold to power customers amounted to 61.29 per cent of the total kilowatt hours sold during the period, the revenue from those sales amounted to only 34.03 per cent of the total revenue from electric sales. Sales on a flat rate basis, sales to other electrical corporations, and sales for municipal street lighting accounts for the remaining sales of electric energy. During the entire period from July 1, 1928 to June 30, 1933, the company sold 1,321,600,268 kilowatt hours and the revenue received amounted to $38,810,431, an average of 2.94¢ per kilowatt hour.

Although Southern Public Utilities Company has some generating capacity, most of its electrical requirements are furnished by Duke Power Company which

(457) likewise owns the transmission lines supplying the power to the multiple distribution systems owned by Southern Utilities Company. This power was purchased principally under the established rate schedules of Duke Power Company. Each distribution system of Southern Public Utilities Company, there being about 97 at the end of 1933, was billed separately for the power purchased on the basis of the demand and amount of energy received by that particular system. There was no single contract covering all power purchased from Duke Power Company for the entire Southern Public Utilities System.

As previously noted, Southern Public Utilities Company leases its Mountain Island Plant to Duke Power Company for operation. The lease agreement provides that Southern Public Utilities Company shall receive as rental 7 mills per kilowatt hour generated in the plant, and that the minimum annual rental shall be on the basis of the generation of 90,000,000 kilowatt hours per year, which would amount to a minimum yearly rental of $630,000.

Sales of gas by Southern Public Utilities Company were to residential and commercial customers. During the 5-year period from July 1, 1928 to June 30, 1933, the company sold 2,767,445 M. C. F. of gas and received therefrom aggregate revenue of $4,543,617, or an average of $1.64 per M. C. F. The company owns and operates its own gas manufacturing plants.

Southern Public Utilities Company has never paid any management or supervision fees to Duke Power Company nor other affiliated company.

Profit and loss—surplus of Southern Public Utilities Company as of December 31, 1933, amounted to $3,005,131.06. This surplus represented net corporate income of $18,374,516.33 during the entire period from organization to December 31, 1933; surplus acquired through merger of subsidiary companies amounted to $1,202,396.45; miscellaneous surplus credits of $11,228.96; less cash and stock dividends on the capital stock of the company of $16,578,587.50, and miscellaneous surplus debits

(458) of $4,423.18. The surplus acquired through merger of subsidiary companies represented the increase in the surplus of the subsidiary between the date of acquisition of control by Southern Public Utilities Company and the date of merger. Dividends on common capital stock were paid in both cash and in stock. The cash dividends up to December 31, 1933, amounted to $10,578,587.50 and the stock dividends amounted to $6,000,000. The dividends paid in stock were charged against profit and loss—surplus and credited to the common stock account, thus capitalizing and reinvesting in the business the earnings declared as stock dividends.

The rates of return on average fixed capital per the company's books and on average fixed capital less the aggregate write-ups of $7,029,208 for the years ended June 30, 1925 to 1933, based on net operating income before deducting Federal income taxes, were as follows:

Year Ended	Rate of Return on Average Fixed Capital Per Books	Rate of Return on Average Fixed Capital Less Write-ups
June 30, 1925	7.76%	11.26%
" 1926	6.71	9.59
" 1927	7.33	10.26
" 1928	8.37	11.33
" 1929	9.22	11.82
" 1930	8.07	9.99
" 1931	6.53	7.99
" 1932	5.34	6.47
" 1933	4.81	5.54

After deducting Federal income taxes from net operating income, the rates of return on average fixed capital per the company's books and on average fixed capital less write-ups were as follows for the years ended June 30, 1925 to 1933:

(459) Rates of Return on Average Fixed Capital

Year Ended	Per Books	Less Write-ups
June 30, 1925	7.07%	10.25%
" 1926	5.95	8.50
" 1927	6.66	9.32
" 1928	7.63	10.32
" 1929	8.56	10.98
" 1930	7.42	9.19
" 1931	5.86	7.17
" 1932	4.80	5.83
" 1933	4.14	4.77

It will be observed that the rates of return generally increased from 1926 to 1929; thereafter gradually decreasing due to reduced revenue principally as a result of the effect of the depression and reduced rates for electric service. The annual cost, as estimated by the company, from reduced rates for electric service made in 1932 and 1934 was as follows:

Reduction effective	Estimated Annual Cost
November 1, 1932	$872,900
September 1, 1934	610,000
Total	$1,482,900

The rates of return on average capital employed, average borrowed and invested capital, and on average capital employed less write-ups for the years ended June 30, 1925 to 1933, based on the income available for interest and dividends before deducting Federal income taxes, were as follows:

Rates of Return on Average Capital Employed

Year Ended	Per Books	Less Write-ups
June 30, 1925	8.53%	12.71%
" 1926	7.55	11.14
" 1927	8.53	12.49
" 1928	9.30	13.47
" 1929	10.57	15.04
" 1930	8.27	10.07
" 1931	6.89	8.36
" 1932	5.88	7.13
" 1933	5.65	6.69

(460) After deducting Federal income taxes from income available for interest and dividends, the rates of return on average capital employed were as follows for the years ended June 30, 1925 to 1933:

Year Ended	Rate of Return on Average Capital Employed as Per Books	Rate of Return on Average Capital Employed Less Write-ups
June 30, 1925	7.79%	11.61%
" 1926	6.73	9.93
" 1927	7.78	11.39
" 1928	8.43	12.20
" 1929	9.68	13.77
" 1930	7.68	9.35
" 1931	6.24	7.57
" 1932	5.34	6.48
" 1933	4.87	5.77

The rates of return on common stock equity, representing the par value of common stock plus profit and loss—surplus, and on common stock equity less the aggregate write-ups of $7,029,208, for the years ended June 30, 1925 to 1933, based on the earnings available for dividends on common stock after deducting Federal income taxes, were as follows:

Year ended—	Rate of Return on Average Common stock Equity per Books.	Rate of Return on Average Common Stock Equity Less Write-ups.
June 30, 1925	9.44%	22.62%
" 1926	7.57	17.38
" 1927	9.38	20.83
" 1928	10.43	22.02
" 1929	12.39	24.39
" 1930	9.45	13.81
" 1931	6.86	9.92
" 1932	5.31	7.65
" 1933	4.16	5.88

As of April 30, 1935, subsequent to the final date of examination, Southern Public Utilities Company was merged by its parent company, Duke Power Company.

(461) The merger of the properties was effected on the basis of the book cost to Duke Power Company which was $4,331,455 in excess of the ledger value as shown by the books of Southern Public Utilities Company which ledger value included aggregate write-ups of $7,029,208 as previously explained.

DEFENDANTS' EXHIBIT 49.

Defendants introduced as their Exhibit 49 a copy of the Application of Greenwood County to the Public Works Administration for a loan and grant of $2,627,197.00, of which the estimate of the cost of said project is given as follows:

Estimate of cost.

(1) Preliminary.			
Engineering		$5,000.00	
Legal		1,500.00	
Clerical		500.00	
			7,000.00
(2) Cost of Land:			
13,200 acres @ $25.00		330,000.00	
Easements		3,320.00	
			333,320.00
(3) Construction Costs:			
	Labor	Material	
8000 acres Clearing reservoir	150,000.00	10,000.00	
1½ Miles access railroad	4,000.00	3,500.00	
610,000 cy. yd. fill in dam @ 38c	90,000.00	141,800.00	
2000 cu. yd. stripping top soil from base of turn @ 50c	500.00	500.00	
500 cu yd. 1" gravel under rip rap @ $3.50	900.00	850.00	
3000 cu. yd. 1 man rip rap on face of turn @ $2.50	5,000.00	2,500.00	

(462) Spillway construction complete	55,000.00	97,944.00	
1 intake tower and gates complete	20,000.00	28,080.00	
Penstocks & surge tanks complete	80,000.00	83,040.00	
Power house structure	85,000.00	85,201.00	
Powerhouse equipment Hydraulic	75,000.00	179,100.00	
Electric equipment complete	100,000.00	395,417.00	
Main transmission lines	20,000.00	40,000.00	
Rural electric lines	40,000.00	60,000.00	
Highways, railroads and higher lines to move	75,000.00	20,570.00	
	800,400.00	1,148,502.00	1,948,902.00
(4) Engineers Fee Add to preliminary			135,875.00
(5) Lake:			
Additional		30,000.00	
Administration		25,000.00	55,000.00
(6) Interest during construction approximate			60,000.00
(7) Miscellaneous:			
Print of bonds		7,500.00	
Advertisement of contract		100.00	
Contingent fee		79,500.00	
Grand Total			2,627,197.00

This application is for the construction of the project as orlginally contemplated, which would have been confined in its operation to Greenwood County, and according to which the powerhouse, etc. would have been located on the Greenwood County side of the Saluda River.

(463) **DEFENDANTS' EXHIBIT 50.**

RESOLUTION FOR SPECIAL BOARD

Subject: Reconsideration of resolution whereby this Board included in the comprehensive program and made an allotment and grant to finance the project of Greenwood County, South Carolina, for the construction of an hydroelectric plant comprising an easthen dam across the Saluda River and other works.

Whereas by resolution dated June 20, 1934, the project for the construction of an hydroelectric plant comprising an earthen dam across the Saluda River and other works, Docket No. 3972 was included in the comprehensive program and the sum of $2,757,00 was allotted for the purpose of aiding its financing by way of loan and grant:

Whereas it appears that the Duke Power Company, a New Jersey corporation engaged in the sale of electric power in the State of South Carolina, has not had an opportunity to be heard in opposition to the said project:

Whereas the Electric Power Board of Review has arranged such hearing on Monday, July 2, at 10 A. M., at the office of said Board:

Resolved that the resolution whereby said project was included in the comprehensive program and allotment made for its financing be now reconsidered and reconsideration having been had that said project be placed on the agenda of this Board for its next meeting.

FCH

Board approved June 20, 1934.
Presidential approval Jun. 27, 1934.

(464) **DEFENDANTS' EXHIBIT #51.**

FEDERAL EMERGENCY ADMINISTRATION OF PUBLIC WORKS

Washington, D. C.

RESOLUTION OF SPECIAL BOARD FOR PUBLIC WORKS

RE: GREENWOOD COUNTY, SOUTH CAROLINA

Resolved that the Administration and the Special Board include in the comprehensive program a project for the construction of a hydro-electric plant comprising an earthen dam across the Saluda River, a 15,000 kw generating station with necessary control equipment and approximately 90 miles of high and low tension distribution lines, by "Greenwood County", South Carolina, substantially in accord with Docket No. 3972, and allot a sum not to exceed $2,767,000, for the purpose of aiding by way of a loan and grant, the financing of such project, subject to the execution of a contract satisfactory to the Administrator, between the United States of America and "Greenwood County".

Board approval 6/20/34

Presidential approval 7/19/34

F. C. H.

DEFENDANTS' EXHIBIT #52.

Legal—LG: in docket 3972

October 29, 1934.

RESOLUTION

Subject: Docket No. 3972, Greenwood County, South Carolina, hydroelectric generating station and transmission lines, additional allotment of $85,000 (total allotment of $2,852,000).

(465) The Electric Power Board of Review having examined the docket and the data therein and having noted that the Finance and Engineering Divisions have approved this additional allotment subject to certain conditions, concurs in the conclusions reached by said divisions and recommends that an additional allotment of $85,000 be made for this project, subject to the conditions set forth in the supplemental reports of the Finance and Engineering Divisions, provided that condition No. 3 in the supplemental report of the Finance Division shall be understood to be as set forth in the attached memorandum to Mr. Schnepfe.

HENRY T. HUNT,
Chairman.

Records Section PWA
Projects Division

Nov. 9, 1934

Received

DEFENDANTS' EXHIBIT #54.

The defendants introduced in evidence as their Exhibit No. 54, copy of the contract dated as of December 8, 1934, between the County of Greenwood, South Carolina, and the United States of America, by Harold L. Ickes, a copy of which said contract is attached to the original answer of the defendant, Harold L. Ickes as Federal Administrator of Public Works, as Exhibit "A", and made a part thereof, and reference is made thereto.

DEFENDANT'S EXHIBIT 55.

SEABOARD AIR LINE RAILWAY COMPANY

Valuation Section 2—South Carolina.

Total reproduction costs, as shown in basic engineering report, of bridge over Saluda River on valuation date, June 30, 1918, with prices as of 1910-1914.

(466) Account 6.

Mile 415.

Bridge 108.9 over Saluda River, consisting of one single track, 200-ft. through truss, steel span on stone piers.

Timber trestle approach on South end	585 ft. long
Timber trestle approach on North end	202 ft. long
Total length of timber trestle	787 ft.

Item	Cond. Per Cent	Cost of Production New	Less Depre.
Substructure—stone piers	80	$12,988	$10,390
Superstructure—steel	64	12,534	8,008
Timber trestle approaches	45	13,378	6,182
Engineering and General Expenditures	65	4,303	2,797
Total Bridge		$44,759	$28,933

Plaintiffs duly objected to the foregoing exhibit on the ground that same is incompetent, irrelevant, immaterial, and is hearsay.

DEFENDANTS' EXHIBIT 56.

ATLANTIC COAST LINE RAILROAD COMPANY
Subsidiary

Subsidary

CHARLESTON & WESTERN CAROLINA RAILROAD COMPANY

Valuation Section 1—South Carolina

Total reproduction costs, as shown in basic engineering report, of bridge over Saluda River on valuation date, June 30, 1915, with prices as of 1910-1914.

Station 4090—16

Bridge over the Saluda River, consisting of two steel through truss spans, single track, on stone piers.

(467) Total length of steel, 255 feet.

Timber trestle approach on East end	249 ft. long
Timber trestle approach on West end	596 ft. long
Total length of timber trestle	845 ft.

Item	Cond. Per Cent	Cost of Reproduction New	Less Depr.
Substructure—stone piers	75	$11,773	$ 8,830
Substructure—steel, two spans	82	16,885	13,837
Timber trestle approaches	65	11,051	7,183
Engineering and general Expenditures	76	4,391	3,337
Total bridge		$45,688	$34,775

Plaintiffs duly objected to the foregoing exhibit on the ground that same is incompetent, irrelevant, immaterial, and is hearsay.

DEFENDANTS' EX. 57.

This exhibit is a copy of the Minutes of a hearing given the Duke Power Company before the Public Works Administration July 2, 1934. The original Exhibit is being forwarded to the Circuit Court of Appeals.

DEFENDANTS' EXHIBIT #58.

FEDERAL EMERGENCY ADMINISTRATION OF PUBLIC WORKS

State Engineer

Box 780
Columbia, S. C.

Mr. D. W. Robinson, Jr.,
Attorney at Law,
Columbia, S. C.

Dear Sir:

I hand you herewith a list of approved projects of

(468) the Public Works Administration since this office was organized in August, 1933, 19 of which have been completed and 35 of which are now under construction:

(Copy list)

Applicant	Type of Project	Amount
City of Columbia	Water & Sewer Extension	$893,000
Parker Dist., Greenville	Sewer Extension	415,000
Augusta Road, "	Sewer Extension	205,000
McLeod Infirmary, Florence	Hospital	300,000
City of Greenwood	Waterworks extension	200,000
Town of Hartville	Water & Sewer Extensions	73,000
City of Greenwood	Sewer Extensions	47,000
Town of Cameron	Waterworks	33,000
Sumter	Water & Sewer Exten.	108,000
Georgetown County	Toll Bridge	760,000
Georgetown (Town)	Well	10,000
Fort Mill	Sewer Extensions	89,000
Anderson	Street Paving	101,000
Calhoun Falls	Waterworks & Sewer	72,000
Central	Waterworks	62,000
Hampton	Waterworks	40,000
Olympia School, Columbia	School Bldg. (Grant)	2,700
Jefferson	Waterworks	26,000
Williamston	Water & Sewer	135,000
Holly Hill	Waterworks	31,500
Summerton	"	37,000
Prosperity	"	40,000
Lynchburg	"	31,000
Mount Pleasant	"	75,000
Society Hill	"	24,000
Rock Hill	Sewer System	263,000
Irmo School Dist. #45 Lexington County	School Bldg.	120,000
City of Blackville	Waterworks	45,000
Woofruff School Dist. #33, Spartanburg City	School Bldg.	34,000

(469)

Applicant	Type of Project	Amount
Aiken County	Hospital	158,000
Barnwell High School District	School Bldg.	50,000
xNewberry County-	Paving (transferred to Bureau of Public Roads)	98,000
Town of Pinewood	Waterworks	23,000
Rock Hill School Dist. #12, York County	School Bldg.	128,000
Town of Whitmire	Paving	9,000
Ridgeville School Dist. #12, Dorchester County	School Bldg.	28,000
Fairforest School Dist. #2, Spartanburg County	,, ,,	30,000
Town of Pendleton	Waterworks	52,000
Iva School Dist. #44 Anderson County	School Bldg.	55,500
Town of Hartville	Sewer Extension	41,000
State of South Carolina-Memorial Commission, Columbia	Memorial Bldg. (Grant)	33,200
Greenwood County	Hydro-Electric	2,852,000
Florence County	Court House	118,900
Town of Clinton	Water & Sewer Extension	78,000
Township of Hartsville	Community Center	125,000
Town of Bethune	Water	26,000
Town of Loris	,,	31,000
City of Spartanburg	,,	25,000
Town of Pageland	Water & Sewer	49,000
Timmonsville School District #16	School Bldg.	12,000
Batesburg	Water Extension	95,000
S. C. State Institutions	Buildings	976,000

(470)

Applicant	Type of Project	Amount
Town of Mayesville	Waterworks	24,000
Town of Varnville	"	27,000
Town of Pamplico	"	28,000
City of Columbia	Market Shed	42,000
City of Bamberg	Sewer System & Disposal plant	100,000
City of Bishopville	School Bldg.	80,800
*City of Greenville	Hospital (rescinded)	140,000
*City of Bennettsville	Library Bldg. (Grant)	800
*Town of Honea Path	Paving & Sewer	26,300
*Town of Honea Path	Waterworks & Pool	10,000

*Note: Rescinded by applicant.

Yours very truly,

(S) J. L. M. IRBY,
Acting State Director, PWA.

DEFENDANTS' EXHIBIT #61.

EXECUTIVE ORDER

Administration of Public Works.

Pursuant to the authority of AN ACT To encourage National Industrial Recovery, to foster fair competition, and to provide for the construction of certain useful public works, and for other purposes", approved June 16, 1933, and in order to effectuate title II—Public Works and Construction Projects—thereof;

I hereby appoint Harold L. Ickes to exercise the office of Federal Emergency Administrator of Public Works.

FRANKLIN D. ROOSEVELT.

THE WHITE HOUSE,
July 8, 1933.

(No. 6198)

(471) **DEFENDANTS' EXHIBIT #62.**

EXECUTIVE ORDER

DELEGATING CERTAIN FUNCTIONS AND POWER TO THE FEDERAL EMERGENCY ADMINISTRATION OF PUBLIC WORKS.

By virtue of and pursuant to the authority vested in me by section 201(a) of the National Industrial Recovery Act, approved June 16, 1933, 48 Stat. 195 (hereinafter referred to as the "Act"), I hereby delegate to the Federal Emergency Administrator of Public Works the following functions and powers:

1. In his discretion, and upon such terms and conditions as he may prescribe, to sell, assign, transfer, and deliver all securities or any part thereof purchased under the authority of section 203 of the said Act and of Title II of the Emergency Appropriation Act, fiscal year 1935, approved June 19, 1934, Stat. 1021, and to apply the proceeds as prescribed by section 203 of the said Act and said Emergency Appropriation Act, fiscal year 1935.

2. To alter, amend, or waive any or all rules and regulations set forth in Executive Order No. 6252 of August 19, 1933, and any other rule or regulation promulgated by the President under the authority of section 209 of said Act, and to prescribe pursuant to the authority of the said section 209 any other rules or regulations as are necessary to carry out the purposes of said Act; Provided, however, no rule or regulation of the violation of which is made punishable by fine or imprisonment under the said section 209 shall become effective until approved by me.

FRANKLIN D. ROOSEVELT.

THE WHITE HOUSE,
December 26, 1934.

(No. 6929)

(472) **DEFENDANTS' EXHIBIT #66.**

PRIMARY POWER CONTRACT

Schedule No. 10, Class 1.

MEMORANDUM OF AGREEMENT, made and entered into this 27th day of March, 1935, by and between Southern Public Utilities Company, a corporation organized and existing under the laws of the State of Maine, party of the first part, hereinafter designated as and called the "Power Company", and Commissioners of Public Works of the City of Laurens and the City of Laurens, a municipal corporation organized and existing under the laws of the State of South Carolina, party of the second part, hereinafter designed as and called the "consumer", WITNESSETH: *******

FIRST: The Power Company agrees that it will deliver to the Consumer electric power, and the Consumer agrees to receive, use, and pay for said electric power, at the time and place or places, and for the purposes, and in the amount, and in the manner, and in accordance with the terms, limitations, and conditions hereinafter set forth for and during, and this contract shall continue in force for the term of one year from the date or day on which the delivering of electric power hereunder is and shall be actually begun; and thereafter it shall continue in force from year to year, provided, however, that the parties hereto, or either of them, can terminate the same at the end of the original term of one year, or at the end of any year thereafter by giving at least sixty (60) days' previous notice of such termination in writing.

SECOND: The electric power to be supplied hereunder shall be three-phase, alternating, at approximately sixty (60) cycles per second periodicity, and of a voltage to be determined upon, from time to time, by the Power Company at approximately Two Thousand, Three Hundred (2,300) volts. Said electric power shall be delivered and supplied by the Power Company to the Consumer at a terminal or delivery point located in the State of South Carolina, County of Laurens, at or near Laurens, and more particularly located and established, to-wit: At the disconnecting switches of the Power Company located at the outdoor substation of the Power

(473) Company at the site of the old steam power plant in Laurens.

All meters used for measuring said electric power hereunder shall be located at the above delivery point.

THIRD: The maximum amount of electric power which the Power Company shall be required to deliver under this contract is and shall not be in excess of 600 kilowatt, which amount shall be known as the contract demand. If and when the requirements of the consumer become greater than this contract demand, then if the Power Company has additional power, this contract demand may be increased by such additional amount as the parties may agree upon.

The Consumer expressly agrees that it will pay for all electric power received and used by it each month under this contract at the following scale of rates:

Schedule No. 10.

Demand Charge	Kilowatts Billing Demand	Per Kilowatt
First	300	$1.15
Next	700	1.00
All Over	1,000	.90
PLUS AN		
Energy Charge:	Kilowatt Hours Per Month	Per Kilowatt Hour
First	50,000	.82 cents
Next	150,000	.80 cents
Next	200,000	.75 cents
All Over	400,000	.70 cents

Bills shall be rendered each month by the Power Company to the Consumer for the electric power delivered during the preceding month, and all such bills shall be payable at the office of the Power Company at Charlotte, North Carolina, on or before the 5th day of the calendar month immediately succeeding the month in which said electric power shall have been delivered.

• • • • • • • •

(474) SIXTH: The electric power delivered hereunder is and shall be delivered for the purpose of its being used by the Consumer for lighting the streets and the public and private buildings and for furnishing electricity for lighting, heating and motive power to the inhabitants of the City of Laurens, South Carolina, and for other municipal purposes at said City of Laurens, and the Consumer is not permitted to, and hereby agrees not to, us or apply said electric power delivered hereunder, or any part thereof, in any place or places, or in any manner, or for any purposes, other than are provided for in this contact.

* * * * * * * *

EIGHTH: All of such electric power which shall be leased, sublet or otherwise disposed of by the Consumer to any person, firm, or corporation shall be leased, sublet, or disposed of under contract, each of which contracts shall be subject to this contract.

DEFENDANTS' EXHIBIT #67.

Contrrct between Duke Power Company and the City of Newberry, dated February 12, 1935, similar to Exhibit 66.

WHEREFORE, the parties agree upon the above and foregoing statement of evidence as a true, full, correct and complete statement of all the material evidence taken and given on the trial of this cause.

This Septmber 27, 1935.

HENRY T. HUNT,
W. H. NICHOLSON,
R. F. DAVIS,
D. W. ROBINSON, JR.,
Attorneys for Defendants-Appellants.

H. J. HAYNSWORTH,
W. R. PERKINS,
J. H. MARION,
W. S. O'B. ROBINSON, JR.,
Attorneys for Plaintiffs-Appellees.

(475) IT IS ORDERED: That the foregoing Statement of Evidence, consisting of four parts and three hundred and seventy-one pages, exclusive of certain exhibits and certain additions to the Testimony, be, and the same is, hereby approved.

(signed) H. H. WATKINS,
United States District Judge.

Greenville, S. C.

October 1, 1935.

DEFENDANT'S MOTION TO STRIKE OUT CERTAIN TESTIMONY.

Filed July 19, 1935

Mr. D. W. Robinson, Jr.: Your Honor, I move to strike out the testimony offered by plaintiffs dealing with the question of the cost of the project, the design and safety features of the dam, the operation of revenues and expenses, and the question of whether the loan will be adequately secured, and the project self-liquidating.

The Court: Now that presents to the Court a different question than what was in the original motion, because the original motion admitted the allegations of the bill upon those points.

Mr. D. W. Robinson, Jr.: Now, if your Honor would prefer us to argue that with the main features,—

The Court: I was just going to suggest, Mr. Robinson, that it might be well to argue all the questions together, because, without having ample time to study the testimony, I have reviewed it,—I may say, hurriedly,—and I understand from Mr. Walters that all the testimony is completed but that of two or three witnesses.

Mr. D. W. Robinson, Jr. requests ruling on motion.

The Court: On that point, Mr. Robinson, my present view is this: that in the making up of those estimates,

(476) where there is substantial evidence at all to support the finding of the Administration, the Court ought not to interfere with it; that there is a large discretion in those matters, and that the Court certainly would not interfere with the exercise of a discretion that is not unreasonable.

Mr. D. W. Robinson, Jr.: Now, if your Honor please, we also interposed objections, and wish to renew them now, to certain testimony of the plaintiffs on the ground that it is hearsay, particularly Mr. Sirrine's report and Mr. Cothran's report. Their testimony related that they had obtained information in there from various sources, including witnesses placed on the stand, and we think that that testimony is hearsay, and ask your Honor to consider that as we go through. The same thing as to Mr. Marshall's statement. It developed on cross-examination that it had been largely prepared for him.

The Court: In that connection, I find that there was a great deal of testimony introduced on both sides objected to as hearsay. Certain documents were introduced in evidence, too, without proof as to who made them, and circumstances under which they were made, and the question of hearsay would involve a very considerable portion of this testimony on both sides; and if the rule is applied strictly, it is going to exclude an exceedingly large portion of the transcribed testimony. But those matters you can discuss generally.

(477)

OPINION.

Filed August 12, 1935.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF SOUTH CAROLINA.
EQUITY 451.

Duke Power Company and Southern Public Utilities Company, Plaintiffs,

vs.

Greenwood County nd E. L. Brooks, S. A. Agnew and E. I. Davis, as members of and constituting The Finance Board for Greenwood County, and Harold L. Ickes, as Federal Emergency Administrator of Public Works, Defendants.

This cause was previously heard by me upon motions of all defendants to dismiss plaintiffs' original and supplemental bill. At that time it was the Court's understanding that it was the desire of all defendants that the cause be finally determined upon these motions without resort to testimony. After due consideration the Court, on April 23, 1935, filed an elaborate opinion, to which reference is here craved. 7 F. Supp. 854. Immediately after the filing of this opinion, and before any order was passed, counsel for defendants appeared and submitted a request that the cause be reopened for the purpose of allowing the presentation of testimony upon

(478) the issues involved. This request was granted, and, at the request of both sides, W. M. Walters, Esq. was appointed Special Master to take the testimony and report same to the Court. This he promptly proceeded to do, and submitted to the Court from day to day the record of evidence as it was transcribed. This record consisted of 667 typewritten pages of oral testimony, together with a great many and voluminous exhibits. Upon this record the cause was argued before me orally on July 19, 1935, and thereafter counsel were permitted to submit written briefs, the last of which reached me on August 7, 1935. Realizing the importance of a prompt determination of the cause, I have studied the evidence and the briefs as carefully and as rapidly as possible upon their presentation. At the last hearing the Court invited counsel freely to discuss and criticise its former opinion, not only upon the issues of fact included in the testimony, but also upon all issues of law discussed and decided in the former opinion. That opinion went so fully into a discussion of both the law and the facts that it would be unnecessary repetition to reiterate such of those findings as are herein approved. In order, therefore, to expedite the determination of the cause, I think it sufficient to say that all findings of fact and conclusions of law set out in the opinion heretofore filed, and above-referred to, are ratified, confirmed, and adopted as the opinion of this Court, except as hereinafter modified, supplemented, denied, or explained.

I. FINDINGS OF FACT.

The Fourth finding of fact is hereby revoked. It is in accordance with the allegations of the bill, which the motion to dismiss admitted. Much of the testimony taken related to this point, and defendants introduced substantial evidence supporting their contention that the project would be self-liquidating. It is shown that extensive investigations were made, and estimate submitted to the Administrator as the result of these investigations. On the other hand, plaintiffs introduced a great deal of testimony showing investigations and estimates of able and experienced engineers to the contrary. Although, however, the Court may entertain se-

(479) rious doubts of the feasibility of the projects in the light of this testimony, it does not feel at liberty to substitute its judgment for the judgment of the Administrator. There being substantial evidence to support his findings, the decision of the Administrator is conclusive upon this Court.

Considerable evidence was introduced on the question of the adequacy of the service rendered, and to be rendered, by the plaintiffs, and the reasonableness of their rates. The territory covered by the County's proposed project, and the limits within which it may operate, are purely intrastate. It is abundantly shown that not only have the plaintiffs surplus power for sale within this territory, but that they have made provision for such future demands as may be made upon them by the acquisition of a large amount of undeveloped property, and of traffic arrangements with other power companies. In addition to this, the law has empowered the Railroad Commission to determine what rates shall be charged, with the further requirement that adequate service shall at all times be rendered. It is significant that in all the mass of testimony defendants failed to produce a single witness to the effect that an application to the plaintiffs for the furnishing of power within the territory in question has been made and refused; or that any application in respect of either rates or the furnishing of power has been presented to the Railroad Commission and refused. We think it enough to say in this respect that the administrative body selected by the State, to-wit: the Railroad Commission, has been duly charged with the supervision of these matters, and its action or failure to act is within its discretion and final, in the absence of any evidence that it has been arbitrary or has abused its discretion. Considerable evidence was introduced, including the Report of the South Carolina Power Rate Investigating Committee, and the Report of the Federal Power Commission, and other investigations on the electrical situation and national power survey. These reports, however, were and are available to the Railroad Commission for its investigation, and it is to be assumed that it discharged the duties required of it by law, and the finality of its decisions may not now be questioned by this Court.

(480) Objection is made to that portion of the third finding of fact which states, in effect, that the construction of the plant is to be under the supervision and direction of the Administrator. We think that the subsequent finding of fact, included in the previous statement of the Court, that the contract finally entered into was to be accepted as the true contract, will sufficiently explain that the Court really meant to and did, as it does now, hold that the plant is to be constructed by the County under certain supervisory terms and conditions therein outlined. The Government proposes to provide for the entire expense of construction, in part by gift or grant, the balance to be secured by self-liquidating bonds. The terms required, however, include many supervisory characteristics, such as restrictions as to labor, hours per week, minimum wages, when payment are to be made, labor preferences, the source of labor and insurance. It also requires the fixing of rates agreeable to the Administrator. Strictly speaking, supervision may consist in directing either what shall or shall not be done.

In connection with plaintiff's assertion of their status as State and Federal taxpayers, I find that the undisputed evidence shows that for the calendar year 1934, the ratio of the combined taxes of plaintiffs to their combined gross receipts was 23.96 per cent., part of which amount was paid to the Federal Government, and part to the State, counties and municipalities. Embraced in these taxes were items of State and Federal income taxes, excise taxes, franchise taxes, special privilege taxes on gross receipts, etc.

As above stated, all findings of fact included in the former opinion, not hereinabove modified or denied, are hereby ratified, confirmed, and made the finding of the Court in this opinion; and all requests for findings of fact inconsistent therewith are hereby denied.

II. CONCLUSIONS OF LAW

While numerous additional citations of authority have been presented by counsel in their final briefs in this

(481) cause, and while it might be interesting to supplement the citations and discussions of authorities set out in the original opinion, I deem it wholly unnecessary, especially since it would delay the final determination of the cause.

The constitutionality of the Act providing for the establishment of the Public Works Administration, as applicable to the facts of this case, was fully discussed under the fifth subdivision of my conclusions of law, and embraced under Sub-heads: Commerce and General Welfare. I fully approve and adopt these conclusions without modification. I also approve the conclusions as to plaintiffs' right to maintain the suit. In this connection it should be added that the evidence shows that the plaintiffs' status as taxpayers to the Federal Government, as well as to the State Government, differs essentially from that of the ordinary taxpayer, in that not only are they subjected to the payment of large property and income taxes, but they are also subjected to the payment of franchise and privilege taxes, and a special tax upon the amount of power sold. I am of opinion therefore, that their status is not limited as in the case of the plaintiffs in Commonwealth of Massachusetts v. Mellon (Frothingham v. Mellon), 262 U. S. 447, 43 S. Ct. 597, 67 L. Ed. 1078, and other cases therein cited. It is true that the specific question has never been decided by the Supreme Court. If, however, that tribunal should hold adversely to what is here indicated, it would be within the power of Congress to levy special privilege taxes far exceeding the amount shown to have been levied in this case, and leave the taxpayer without power to protect himself against complete ruin.

In the former opinion I held, and I may say with some misgivings, that there was no unlawful delegation of lgislative power under the Act in question. Mature consideration has convinced me that I was in error in this respect. The Act appropriates the sum of $3,300,000,000, of which the aggregate sum of $575,000,000 is appropriated in specified amounts to the A. A. A. and F. C. A., to Federal highways, forest highways, and subsistence homesteads. The remainder of this immense sum is undesignated, except that it is stated to be "for

(482) the purpose of this Act", covering many and widely varied projects. The Act leaves the expenditure of the remaining sum entirely in the hands of the President, with power to delegate to the Administrator of Public Works, under projects to be outlined by him and approved by the President. It is significant that no standard is set up by which the President is required to select any specific ones of the objects mentioned, no requirement that he shall allocate the funds among these objects, ratably or otherwise, nor in any standard whatever set up to guide him in the exercise of his discretion. The discretion and control given him are absolute. In aiding in the construction of public works, such as is here proposed, no standard or guide whatever is laid down by Congress other than that the grant shall not exceed thirty per cent, of the cost of the labor and materials. For the reasons above stated, we forego discussion of the authorities other than to refer to the recent decision of the Supreme Court in Schecter Poultry Corporation v. United States, 55 S. Ct. 837. The power to lay taxes and make appropriations of Federal funds rests exclusively in Congress, and its legislative duties may not be committed to any other body or person. It is true that appropriations are to be spent through the Executive Department, but only under proper standards set up by the Legislative Department. The danger of centralizing the powers of the Federal Government was foreseen, and as far as possible guarded against, by the framers of the Constitution, the spirit of which was wholly antagonistic to the thought of the centralization of power. What is said is intended to apply only to so much of the Act in question as is applicable to the facts of this case.

In the former opinion we held that the contract in question was ultra vires because the estimated revenues were insufficient to make the project self-liquidating, and thereby reasonably to secure the repayment of the loan. As above stated, that conclusion was reached upon the motions to dismiss, which admitted the allegations of the bill to that effect. In view of the foregoing finding of fact upon this point, my former conclusion of law in that respect is hereby rescinded. I think, however, that the conclusion that the Act fails to authorize the furnish-

(483) ing of any funds for the purchase of the site is correct. While the Act does authorize the Administrator to purchase sites for development, it is in connection with his purchase of such sites and acquiring title thereto; evidently purchasing for the Federal Government, and acquiring title in the Federal Government. Monies allocated only for the construction of residences could hardly be held to be properly applied to the purchase of lots upon which these structures are built.

Nothing further need be added to the conclusions formerly announced as to the plea of res adjudicata, which conclusions are ratified and approved.

For the reasons, therefore, stated in the former opinion, as herein modified and supplemented, the bill must be sustained, and the injunction must issue. An appropriate order will be filed in accordance with the views hereinabove expressed.

H. H. WATKINS,
United States District Judge.

Anderson, S. C.,
August 10, 1935.

(484) **DECREE FOR INJUNCTION.**

Filed August 26, 1935.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF SOUTH CAROLINA.

Duke Power Company and Southern Public Utilities Company, Plaintiffs,

vs. Equity 451

Greenwood County and E. L. Brooks, S. A. Agnew and E. I. Davis, as members of and constituting The Finance Board for Greenwood County, and Harold L. Ickes, as Federal Emergency Administrator of Public Works, Defendants.

This cause came on to be further heard at this term and was argued by counsel; and thereupon, upon consideration thereof, and pursuant to the opinion filed here-

(485) in and the findings of fact and conclusions of law stated in the opinion, it is ORDERED, ADJUDGED AND DECREED, as follows:

1. That the defendants, their agents, attorneys and successors in office and each and every one of them be, and they hereby are, permanently enjoined and restrained from carrying out and performing the agreement dated as of December 8th, 1934, a copy of which, marked Exhibit A, is attached to and made a part of the answer of the defendant, Harold L. Ickes as Federal Emergency Administrator of Public Work or from construing or causing to be construed by use of Federal funds said Buzzard Roost Project referred to and described in the original Bill of Complaint or any part thereof.

2. That the defendant, Harold L. Ickes, as Federal Emergency Administrator of Public Works, his attorneys, agents and successors in office, and each of them, be, and they hereby are, permanently enjoined and restrained from advancing or paying over to Greenwood County or to any officer, agent or representative of said County any federal funds for the purpose of constructing or operating said Buzzard Roost Project, or any part thereof, and from otherwise appropriating or permitting to be used any federal funds in furtherance of said project.

3. That the defendants, Greenwood County, E. L. Brooks, S. A. Agnew, and E. I. Davis, as members of and constituting The Finance Board for Greenwood County, and all other officers, agents and representatives of said County, and their successors in office, and each of them be, and they hereby are, permanently enjoined and restrained from receiving, accepting or using any federal funds for the purpose of constructing or operating said Buzzard Roost Project.

That the plaintiffs recover of the defendant, Greenwood County, the costs of this action to be taxed by the Clerk according to law.

H. H. WATKINS,
United States District Judge.

August 26, 1935.

(486) **ASSIGNMENT OF ERRORS.**

Filed August 26, 1935.

(Style of Court and Title Omitted.)

On this 26th day of August, 1935, came the defendants, Greenwood County and E. L. Brooks, S. A. Agnew and E. I. Davis, members of and constituting The Finance Board of Greenwood County, by Rupert F. Davis, W. H. Nicholson and D. W. Robinson, Jr., their Solicitors, and Harold L. Ickes as Federal Emergency Administrator of Public Works, by Henry T. Hunt, his Solicitor, and say that the Decree entered in the above cause on the 26th day of August, 1935, is erroneous and unjust to the defendants:

1. Because the Court erred in holding that the plaintiffs are adequately serving the counties of Greenwood, Newberry and Laurens with electrical energy at just and reasonable rates; the error being that the record shows that there is no adequate service at just and reasonable rates, and that there is a shortage of developed electrical energy in this territory.

2. Because the Court erred in holding that the Administrator of Public Works did not comply with the terms of the Recovery Act and of the President's rule in including in the comprehensive program Greenwood County's Buzzard Roost project, in that Greenwood, Newberry and Laurens Counties were being adequately served at reasonable rates by the plaintiffs; the error being:

(a) That the record shows that these three counties are not being adequately served at reasonable rates;

(b) That the Administrator's findings are not subject to review in this suit.

3. Because the Court erred in holding that the South Carolina Railroad Commission had found the plaintiffs' rates reasonable and its service adequate, and that these findings were binding upon the Court; the error being:

(487) (a) That the testimony does not show that the Railroad Commission has so found;

(b) The findings of the Railroad Commission are not conclusive upon this Court.

4. Because the Court erred in holding that the Buzzard Roost hydro-electric project would be constructed under the supervision and direction of the Federal Emergency Administrator of Public Works; the error being that the testimony shows that it would be constructed under the direction of Greenwood County and not of the Administrator.

5. Because the Court erred in holding that the purpose and effect of the purchase of the County's bonds by the Public Works Administrator would be to make municipal power rates a yardstick and bring about regulation and reduction of rates of privately owned power utilities, the error being:

(a) That the record does not sustain this finding;

(b) That the purposes of Congress in passing legislation and of the Administrator in making the allotments are not subject to judicial review;

(c) That the Court takes no cognizance of the incidental effects of the proper exercises of a power by the Government.

6. Because the Court erred in holding that neither the Recovery Act nor the loan and grant agreement permitted any of the proceeds from the loan and grant to be used for the purchase of land in the basin; the error being that a proper construction of the loan and grant agreement does permit the use of a portion of the proceeds for the purchase of land; and a proper construction of the Recovery Act permits the use of a portion of the funds for the purchase of land in the basin.

7. Because the Court erred in holding that the plaintiffs as Federal taxpayers could maintain this Bill, the error being that the record fails to disclose facts show-

(488) ing that there will be any injury or damage to the plaintiffs differing from that of any other taxpayer.

8. Because the Court erred in holding that the plaintiffs, as taxpayers of the State of South Carolina, could maintain this Bill; the error being:

(a) That the plaintiffs failed to show that as taxpayers of the State of South Carolina they would be injured or damaged by the development of the proposed project;

(b) That the Court failed to hold that the decision of the South Carolina Supreme Court in Park v. Greenwood was res adjudicata as to all questions which were or could have been raised by a taxpayer of the State of South Carolina.

9. Because the Court erred in holding that the plaintiffs as holders of valuable franchises could maintain this Bill in order to prevent unfair and illegal competition, the error being:

(a) That the competition of Greenwood County is legal and fair;

(b) That the plaintiffs are not damaged by the acts of the Administrator, even if they are ultra vires.

10. Because the Court failed to find that the plaintiffs had no standing in equity to challenge as ultra vires the acts of the Administrator under the provisions of the loan and grant agreement; the error being that these acts of the Administrator are not subect to review in equity at the instance of the plaintiffs.

11. Because the Court found that the Recovery Act unlawfully delegated powers to the President and to the Administrator of Public Works; the error being that there is no unlawful delegation.

12. Because the Court found that Title II of the Recovery Act laid down no adequate standards or guides as to public works, and that therefore there was unlawful delegation of power to the Administrator; the error be-

(489) ing that Title II of the Recovery Act provides adequate standards, and there is no unlawful delegation of power to the Executive.

13. Because the Court failed to find that the expenditures of funds appropriated by Congress and the compliance with the provisions of appropriation acts are executive functions in which no delegation of legislative power is involved; the error being that this requested finding involves a sound principle of law.

14. Because the Court found Title II of the Recovery Act (40 U. S. C. A. 401-414) could not be sustained under the property clause of the Constitution (Art. IV, Sect, 3, Clause 2); the error being that the Act finds constitutional support in this clause.

15. Because the Court erred in finding that Title II of the Recovery Act was not authorized under the general welfare clause of the Constitution (Art. I, Sect. 8, Clause 1); the error being that the Act finds constitutional support in this clause.

16. Because the Court erred in finding that Title II of the Recovery Act was not authorizing under the coefficient clause of the Constitution (Art. I, Sect. 8, Clause 18); the error being that the Act finds constitutional support in this clause.

17. Because the Court found that the Recovery Act and the Buzzard Roost allotment are not authorized under the Commerce clause of the Constitution (Art. I, Sect. 8, Clause 3); the error being that the Act finds constitutional support in this clause.

18. Because the Court failed to find that the power to appropriate for the general welfare empowered Congress to determine what is the general welfare; the error being that Congress is given such authority under the provision of the Federal Constitution, particularly Art. I, Sect. 8.

19. Because the Court failed to find that foreign and interstate commerce would be effected by the development of the Buzzard Roost project; the error being that

(490) the evidence shows that this commerce would be so effected.

20. Because the Court failed to find that Congress, under its constitutional power to create fiscal agencies of the United States Government had power to create, under the provisions of the Recovery Act, as a fiscal agency of the Public Works Administration; the error being that there is full constitutional authority for the creation of the Public Works Administration as a fiscal agency of the Government.

21. Because the Court failed to find constitutional authority for the Recovery Act in the aggregate of the powers given to Congress under the Constitution; the error being that in consideration of all of the powers given Congress under the Constitution leads to the conclusion there was ample authority for Title II of the Recovery Act.

22. Because of the failure of the Court to give consideration in determining the powers of Congress to the long practice of that body in making apropriations for the general welfare of the United States; the error being that this long practice of Congress is entitled to consideration in determining the powers of Congress.

23. The Court erred in failing to find that the plaintiffs' protest to the Public Works Administration, the hearing accorded there, and the findings of the Public Works Administration against the plaintiffs' contention estopped the plaintiffs from maintaining this Bill; the error being that having submitted themselves to the jurisdiction of an executive body they are bound by the adverse findings of that group.

24. Because the Court failed to find that Greenwood County under the laws of the State of South Carolina had full authority to construct, maintain and operate the Buzzard Roost hydro-electric project in Greenwood, Newberry and Laurens Counties, and full authority to issue revenue bonds for these purposes, the error being:

(a) That full statutory and constitutional authority is given Greenwood County for these purposes by the State of South Carolina;

(491) (b) That this authority has been sustained by the Supreme Court of South Carolina in the case of Park v. Greenwood, which is conclusive upon this Court.

25. Because the Court erred in granting the injunction and refusing to dismiss the Bill; the error being that the Court should have held:

That since the decision of the South Carolina Supreme Court in Park v. Greenwood County, plaintiffs have no standing in Court as taxpayers to raise the issues in this case.

26. Because the Court erred in granting the injunction and refusing to dismiss the Bill; the error being that the Court should have held:

That the plaintiffs have no standing in Court as the holders of franchises to maintain the Bill.

27. Because the Court erred in granting the injunction and refusing to dismiss the Bill; the error being that the Court should have held;

That the Administrator of Public Works had full constitutional and statutory authority to enter into the loan and grant agreement.

WHEREFORE the defendants pray that the said decree be reversed and the Circuit Court of Appeals directed to dismiss the Bill.

W. H. NICHOLSON,
R. F. DAVIS,
ROBINSON & ROBINSON,
Attorneys for Greenwood County and its Finance Board

August 26th, 1935.

HENRY T. HUNT,
Attorney for Harold L. Ickes, as Federal Emergency Administrator of Public Works.

INTRODUCTION.

(492) GREENWOOD COUNTY (SOUTH CAROLINA), E. L. Brooks, S. A. Agnew, and E. I. Davis, as Members of and Constituting the Finance Board of Greenwood County, and Harold L. Ickes, as Federal Emergency Administrator of Public Works, appellants

v.

DUKE POWER COMPANY AND SOUTHERN PUBLIC UTILITIES COMPANY, appellees

---

MOTION.

Now comes the appellant, Harold L. Ickes, as Federal Emergency Administrator of Public Works, and respectfuly shows to this Court:

I

That the final decree, entered herein in the District Court of the United States for the Western District of South Carolina, on Augsut 26, 1935 and from which the present appeal was taken, enjoined this appellant and the appellants Greenwood County and the members of its Finance Committee, from carrying into effect an agreement referred to in the amended and supplemental bill of complaint and dated December 8, 1934 (Tr. 73-94), by which contract the United States agreed to make a loan and grant of certain sums of money to Greenwood County for the purposes of undertaking a hydro-electric project at Buzzard Roost, South Carolina. Said decree further enjoined this appellant from advancing any money to Greenwood County for the purposes of said project (Tr. 494).

II

Subsequently to the taking of this appeal and on or about November 30th, 1935, this appellant and the appellant Greenwood County entered into a contract terminating the aforesaid agreement dated December 8, 1934, and substituting a new agreement in lieu thereof, by which the United States agreed to purchase certain

(493) bonds to be issued by said county and to make a grant of certain funds thereto. The terms and conditions which were contained in the original contract of December 8, 1934, and which were held by the District Court to have been in excess of the power and authority of Greenwood County, under the laws of South Carolina, are not contained in the new contract of November 30, 1935. A copy of the aforesaid contract of November 30, 1935, is hereto annexed and marked Exhibit 1.

On December 2, 1935, two days after the execution of the superseding contract, the Finance Board for Greenwood County adopted a resolution, pursuant to Act. 299, Acts of South Carolina 1933, as amended, by which resolution the Board fixed anew, on the basis of an engineering check-up, made at its direction, rates for the project.

Wherefore, this appellant respectfully moves this Court to direct that the aforesaid Exhibit 1 be added to the Transcript of Record and be considered in connection with the pending appeal herein; that this cause be remanded to the District Court with leave to the parties to amend their pleadings in accordance with the facts above set forth and for a trial or other disposition of the cause on such amended pleadings; and that, in no event, should the final decree herein be affirmed without modifying and limiting it so as only to restrain the appellants from carrying into effect the said original agreement of December 8, 1934, and striking from the decree the provisions contained in the last clause of paragraph 1 and paragraphs 2 and 3 thereof, generally restraining this appellant from lending or granting any funds to Greenwood County for use in connection with said project, or restraining Greenwood County from using such funds in connection with said projects.

JAMES W. MORRIS,
Assistant Attorney General.
ALEXANDER HOLTZOFF,
Special Assistant to the Attorney General.
JOHN W. SCOTT,
Special Assistant to the Attorney General.
JEROME N. FRANK,
Counsel for the Federal Emergency Administration of Public Works.

(494) EXHIBIT 1

FEDERAL EMERGENCY ADMINISTRARAON,
OF PUBLIC WORKS,
Washington, D. C.

SUPERSEDING LOAN AND GRANT AGREEMENT BETWEEN THE COUNTY OF GREENWOOD, SOUTH CAROLINA, AND THE UNITED STATES OF AMERICA (P. W. A. DOCKET NO. 3972)

WHEREAS the United States of America and the County of Greenwood, South Carolina, entered into a loan and grant agreement dated as of December 8, 1934, and

WHEREAS it is deemed to the mutual advantage of said parties to terminate said loan and grant agreement and to substitute in place thereof a new agreement,

Now, therefore, it is hereby agreed by and between said parties, that said Loan and Grant Agreement dated as of December 8, 1934, be and the same hereby is terminated and the following agreement by and between said parties substituted in lieu thereof:

1. *Loan and Grant.*—The United States of America (herein called the "Government") will aid in financing the construction of a hydroelectric plant comprising an earthen dam across the Saluda River, a 15,000-Kw. Generating Station with necessary control equipment, transmission lines, and rural distribution (herein called the "Project"), by making a loan and grant to the County of Greenwood, South Carolina (herein called the "Applicant"), in an amount not exceeding in the aggregate the sum of $2,852,000.

2. *Method of Making Loan.*—The Government will purchase from the Applicant, at the principal amount thereof plus accrued interest, obligations (hereinafter called the "Bonds") of the description set forth below (or such other description as shall be mutually satisfactory) in the aggregate principal amount of $2,219,000, less such amount of such Bonds, if any, as the Applicant may sell to purchasers other than the Government:

(a) Obligor: The County of Greenwood.

(b) Type: Negotiable, special obligation, revenue serial coupon bond.

(495) (c) Denomination: $1,000.

(d) Date: October 1, 1934.

(e) Interest rate and interest payment dates: Four percentum per annum, payable semiannually on April 1 and October 1.

(f) Place of payment: At the office of the Treasurer of the Applicant in the City of Greenwood, South Carolina, or, at the option of the holder, at the office of the fiscal agent of the Applicant in the Borough of Manhattan, City and State of New York.

(g) Registration privileges: As to principal only at the option of the holder.

(h) Maturities: October 1 in years and amounts as follows:

1936	$48,000	1949	$ 92,000
1937	53,000	1950	92,000
1938	58,000	1951	97,000
1939	63,000	1952	102,000
1940	68,000	1953	107,000
1941	68,000	1954	112,000
1942	73,000	1955	112,000
1943	73,000	1956	112,000
1944	73,000	1957	117,000
1945	78,000	1958	122,000
1946	82,000	1959	122,000
1947	87,000	1960	121,000
1948	87,000		

(i) Payable as to both principal and interest from and secured by a pledged of, and first lien on a fixed amount of the gross revenues derived from the operation of the entire hydroelectric power generating, transmission, and distribution system, which fixed amount shall be sufficient at all times to pay the principal of and interest on the Bonds as and when the same become due and payable, and additionally secured by a statutory lien upon the system and any extensions or appurtenances thereto.

3. *Amount of Grant.*—The Government will make the grant in an amount equal to thirty per cent (30%) of the cost of labor and materials employed upon the Project, but not to exceed, in any event, the sum of $682,000.

4. *Conditions Precedent.*—The Government will be under no obligation to take up and pay for any Bonds which it herein agrees to purchase or to make any grant:

(496) (a) *Financial Condition.*—If the financial condition of the Applicant shall have changed unfavorably in a material degree from its condition as theretofore represented to the Government.

(b) *Cost of Project.*—If it appears that the Applicant will not be able to complete the Project for the sum allotted by the Government, or that the Applicant will not be able to obtain any funds which, in addition to such sum, will be necessary to complete the Project.

(c) *Plans and Specifications and Certificate of Purposes.*—If the Applicant shall not have filed with the Government plans and specifications for the Project accompanied by a certificate of purposes setting out in detail the amounts and purposes of the expenditures which the Applicant proposes to make in connection with the Project, and the Government shall not have accepted such plans and specifications and such certificate of purposes as showing that the Project will be constructed in such a manner as to provide reasonable security for the loan to be made by the Government and to comply with Title II of the National Industrial Recovery Act in all other respects.

5. *Interest of Member of Congress.*—No member of or Delegate to the Congress of the United States of America shall be allowed to participate in the funds made available for the construction of the Project or to any benefit arising therefrom.

6. *Bonus or Commission.*—The Applicant shall not pay any bonus or commission for the purpose of obtaining an approval of its application for a loan and grant.

7. *Information.*—The Applicant shall furnish the Government with reasonable information and data concerning the construction, cost, and progress of the work. Upon request the Applicant shall also furnish the Government, and any purchaser from the Government of at least 25 per cent of the Bonds, with adequate financial statements and other reasonable information and data relating to the Applicant.

8. *Bond Circular.*—The Applicant shall furnish all such information in proper form for the preparation of a bond circular and shall take all such steps as the Gov-

(497) ernment or any purchaser or purchasers from the Government of not less than 25 per cent of the Bonds may reasonably require to aid in the sale by the Government or any such purchaser or purchasers of any or all of the Bonds.

9. *Insurance.*—The Applicant shall carry reasonable and adequate insurance upon the completed Project or any completed part thereof accepted by the Applicant or the system of which the Project is a part.

10. *Name of Project.*—The Applicant shall not name the Project for any living person.

11. *Grant and Bond Payments.*

(a) *Payment for Bonds.*—A requisition requesting the Government to take up and pay for Bonds will be honored as soon as possible after such Bonds are ready for delivery, if the bond transcript and other documents necessary to support such requisition are complete.

(b) *Grant Payments.*—Simultaneously with the delivery of and payment for the Bonds by the Government, or, where Bonds are taken up and paid for in more than one installment, simultaneously with the delivery of and payment for the final installment, if the Applicant shall so requisition and if such requisition is accompanied by a signed certificate of purposes in which appear in reasonable detail the purposes for which the funds will be used and that such funds will be used for items properly included as part of the cost of the Project, the Government will make a grant of an amount equal to 15 per cent of the previously estimated cost of labor and materials employed upon the Project. When the Project shall be approximately 70 per cent completed the Applicant may file its requisition for an additional grant in an amount which together with the previous grant payment is equal to 30 per cent of the cost of labor and materials employed upon the Project. The grant requisitions will be honored if the documents necessary to support such requisitions are complete and work on the Project has progressed in accordance with the provisions of this Agreement.

(c) *Final Grant Payment.*—At any time after completing the Project, the Applicant may file a requisition requesting the remainder of the grant which, together (498) with all previous payments on account of such grant, shall be an amount equal to 30 per cent of the cost of labor and materials employed upon the Project, but not to exceed, in any event, the sum of $682,000. The final grant requisition will be honored if the documents necessary to support it are complete and work on the Project has been completed in accordance with the provisions of this Agreement. The final grant payment may be made either wholly by the payment of money, or partially by payment of money and partially by cancellation of Bonds or, interest coupons or both, or wholly by such cancellation.

(d) *Construction Account.*—A separate account or accounts (herein collectively called the "Construction Accounts") shall be set up in a bank or banks which are members of the Federal Deposit Insurance Corporation and of the Federal Reserve System. The advance grant payments, the proceeds from the sale of the Bonds (exclusive of accrued interest and an amount, if any, representing interest during construction), and any other moneys which shall be required in addition to the foregoing to pay the cost of constructing the Project, shall be deposited in the Construction Account, promptly upon receipt thereof. All accrued interest paid by the Government at the time of delivery of the Bonds shall be paid into a separate account (herein called the "Bond Fund"). Payments for the construction of the Project shall be made only from the Construction Account.

(e) *Disbursement of Moneys in Construction Account.*—Moneys in the Construction Account shall be expended only for such purposes as shall have been previously specified in the certificate of purposes filed with and accepted by the Government. All moneys remaining in the Construction Account after all costs incurred in connection with the Project have been paid shall either be used to repurchase Bonds, if any such Bonds are then held by the Government, or be transferred to the Bond Fund.

(f) *Use of Moneys in Bond Fund.*—Moneys in the Bond Fund shall be expended solely for the purpose of paying interest on and principal of the Bonds.

11A. *Construction of Project.*—The following principles have been adopted by the Federal Emergency Ad-
(499) ministration of Public Works in order to effectuate the purposes of Title II of the National Industrial Recovery Act, and the making of the loan and grant herein set forth is conditioned upon the adoption of said principles by the Applicant, in the exercise of its lawful discretion, and upon its applying the same in the construction of the Project.

(a) That if a project is to be constructed under contract, contracts should be awarded to the lowest responsible bidder pursuant to public advertisement and that every opportunity be given for free, open, and competitive bidding for contracts for construction and contracts for the purchase of material and equipment.

(b) That the use in the specifications or otherwise of the name of a proprietary product or the name of the manufacturer or vendor to define the material or product required, unless such name is followed by the term "or equal", is considered contrary to the policy of free, open, and competitive bidding. Where such a specification is used in lieu of descriptive detail of substance and function, the term "or equal" is to be literally construed so that any material or article which will perform adequately the duties imposed by the general design will be considered satisfactory.

(c) That, in the interest of standardization or ultimate economy, the contract may be awarded to other than the actual lowest bidder for the supplying of materials and equipment.

(d) That, in order to insure completion of a project within the funds available for the construction thereof, faithful performance of construction contracts will be assured by requiring performance bonds written in an amount equal to 100% of the contract price by one or more corporate sureties financially able to assume the

risk, and that such bonds will be further conditioned upon the payment of all persons supplying labor and furnishing materials for the construction of the project, except where it is required by the law of South Carolina that protection for labor and materialmen be provided by a bond separate from the performance bond. In such latter case, a performance bond in an amount equal to 100% of the contract price supplemented by a separate labor and materialmen's bond in an amount not less than 50% (500) of the contract price will be adequate. However, where the contract price exceeds $1,000,000, and the obtaining of a bond written in such amount is difficult, a bond in an amount not less than 50% of the contract price will be adequate.

(e) That, if the work on any proposed construction contract is hazardous, the contractor will be required to provide public liability insurance and property damage insurance in amounts reasonably sufficient to protect the contractor and each sub-contractor.

(f) That minimum or other wage rates required to be predetermined by the law of South Carolina or local ordinance shall be predetermined in accordance therewith by the public body constructing the project, and incorporated in the appropriate contract documents. In the absence of applicable law or ordinance, such public body shall predetermine minimum wage rates, in accordance with customary local rates, for all the trades and occupations to be employed on the project, and incorporate them in the appropriate contract documents.

(g) That the work shall be commenced as quickly as possible after funds are made available and be continued to completion with all practicable dispatch in an efficient and economical manner.

(h). That the project will be constructed in accordance with the provisions of the attached Exhibit A which is hereby made a part hereof; to insure this purpose appropriate provisions will be incorporated in all contracts (except subcontracts) for work to be performed at the site of the project. (Exhibit A has been so worded that the provisions thereof may, if the public body construct-

ing the project so desires, be inserted verbatim in such construction contracts or contract.)

12. The Administrator and the Government shall have no rights or power of any kind with respect to the rates to be fixed or charged for the services and facilities afforded by the Project, excepting only such rights as they may have as a holder of such Bonds under the laws and the Constitution of South Carolina and the lawful proceedings of the Applicant, taken pursuant thereto, in authorizing the issuance of such Bonds.

(501) 13. This Agreement is made with the express understanding that neither the loan nor the grant herein described is conditioned upon compliance by the Applicant with any conditions not expressly set forth herein. There are no other agreements or understandings between the Applicant and the Government or any of its agencies in any way relating to said Project.

14. This entire contract is subject to the terms of the injunction decree entered by the District Court of the United States for the Western District of South Carolina.

IN WITNESS WHEREOF, the Applicant and the Government have respectively caused this Agreement to be duly executed as of November 30th, 1935.

Signed and Approved.

E. L. BROOKS,
County Supervisor.

BY COUNTY OF GREENWOOD, SOUTH CAROLINA.

Signed S. A. AGNEW,
County Treasurer.

E. L. BROOKS,
County Supervisor.

[SEAL]
Attest:

E. I. DAVIS,
Secretary of Finance Board for Greenwood County.

UNITED STATES OF AMERICA,
FEDERAL EMERGENCY ADMINISTRATOR OF PUBLIC WORKS,

BY HORATIO B. HACKETT,
Assistant Administrator.

EXHIBIT A

1. (a) *Convict Labor.*—No convict labor shall be employed on the project, and no materials manufactured or produced by convict labor shall be used on the project unless required by law.

(b) *Thirty-hour Week.*—Except in executive, administrative, and supervisory positions no individual directly employed on the project shall be permitted to work more than 8 hours in any 1 day nor more than 30 hours in any (502) 1 week: PROVIDED, That this clause shall be construed to permit working time lost because of inclement weather or unavoidable delays in any 1 week to be made up in the succeeding 20 days.

2. *Wages and Pay Rolls.*—(a) There shall be paid each employee engaged in the trade or occupation listed below not less than the hourly wage rate set opposite the same, namely:

Trade Occupation	Hourly Wage Rate
.....	.....
.....	.....

(Insert Wage Schedule Here)

If after the award of this contract it becomes necessary to employ any person in a trade or occupation not herein listed, such person shall be paid not less than such hourly rate of wage, fairly comparable to the above rates and such minimum wage rate shall be retroactive to the time of the initial employment of such person in such trade or occupation.

(b) Unless otherwise provided by law, claims or disputes pertaining to the classifications of labor under this

contract shall be decided by the Owner whose decision shall be binding on all parties concerned.

(c) All employees shall be paid in full not less often than once each week and in lawful money of the United States, in the full amount accrued to each individual at the time of closing of the pay roll, which shall be at the latest date practicable prior to the date of payment, and there shall be no deductions or rebates on account of goods purchased, rent, or other obligations, but such obligations shall be subject to collection only by legal process: PROVIDED, HOWEVER, That this clause shall not be construed to prohibit the making of deductions for premiums for compensation and medical-aid insurance, in such amounts as are authorized by the laws of..... .....to be paid by employee, in those cases in which, after the making of the deductions, the wage rates will not be lower than the minimum wage rates herein established.

(d) A clearly legible statement of all wage rates to
(503) be paid the several classes of labor employed on the work, together with a statement of the deductions therefrom for premiums for workmen's compensation and/or medical aid insurance authorized by the law of ....., should such deductions be made, shall be posted in a prominent and easily accessible place at the site of the work, and there shall be kept a true and accurate record of the hours worked by and the wages, exclusive of all authorized deductions, paid to each employee, and the Government Inspector shall be furnished with sworn pay rolls in accordance with the "Regulations Issued Pursuant to So-called 'Kick-Back Statute.'"

3. (a) *Labor preferences.*—Preference shall be given, where they are qualified, to ex-service men with dependents, and then in the following order: (1) to citizens of the United States and aliens who have declared their intention of becoming citizens, who are bona fide residents of (political subdivision and/or county)..... ..... and (2) to citizens of the United States and aliens who have declared their intention of becoming citizens, who are bona fide residents of (State, Territory, or District) .....PROVIDED, That these

preferences shall apply only where such labor is available, and qualified to perform the work to which the employment relates.

(b) *Collective Bargaining.*—Employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. No employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing.

4. *Human Labor.*—The maximum of human labor shall be used in lieu of machinery wherever practicable and consistent with sound economy and public advantage; and to the extent that the work may be accomplished at (504) no greater expense by human labor than by the use of machinery, and labor of requisite qualifications is available, such human labor shall be employed.

5. *Insurance.*—The contractor shall not commence work under this contract until he has obtained all insurance required under this paragraph and such insurance has been approved by the Owner, nor shall the contractor allow any subcontractor to commence work on his subcontract until all similar insurance required of the subcontractor has been so obtained and approved.

(*a*) *Compensation Insurance.*—The contractor shall take out and maintain during the life of this contract adequate Workmen's Compensation Insurance for all his employees employed at the site of the project and, in case any work is sublet, the contractor shall require the subcontractor similarly to provide Workmen's Compensation Insurance for the latter's employees, unless such employees are covered by the protection accorded by the contractor. In case any class of employees engaged in hazardous work under the contract at the site of the project is not protected under the Workmen's Compen-

sation statute, or in case there is no applicable Workmen's Compensation statute, the contractor shall provide and shall cause each subcontractor to provide.....
.....for the protection of his employees not otherwise protected.

(*b*) *Public Liability and Property Damage Insurance.*—The contractor shall take out and maintain during the life of this contract such Public Liability and Property Damage Insurance as shall protect him and any subcontractor performing work covered by this contract from claims for damages for personal injury, including wrongful death, as well as from claims for property damages, which may arise from operations under this contract, whether such operations be by himself or by any subcontractor or anyone directly or indirectly employed by either of them. The amounts of such insurance shall be as follows:

Public Liability Insurance in an amount not less than $..... for injuries, including wrongful death, to any one person, and subject to the same limit for each person, in an amount not less than $....., on account of one accident, and Property Damage Insurance in an amount not less than $.....

(505) Provided, however, that the Owner may accept insurance covering a subcontractor in character and amounts less than the standard requirements set forth under this sub-paragraph (b) where such standard requirements appear excessive because of the character or extent of the work to be performed by such subcontractor.

(c) The following special hazards shall be covered by rider or riders to the policy or policies required under the subparagraph (b) hereof or by separate policies or insurance in amounts as follows:

.....

6. *Persons entitled to benefits of labor provisions.*—There shall be extended to every person who performs

the work of a laborer or of a mechanic on the project or on any part thereof the benefits of the labor and wage provisions of this contract, regardless of any contractual relationship between the employer and such laborer or mechanic. There shall be no discrimination in the selection of labor on the ground of race, creed, or color.

7. *Withholding payment.*—The owner may withhold from the contractor so much of accrued payments as may be necessary to pay to laborers or mechanics employed on the work the difference between the rate of wages required by this contract to be paid to laborers or mechanics on the work and the rate of wages actually paid to such laborers or mechanics, and disburse the withheld funds, for and on account of the contractor, in the amounts and to the employees to whom they are due.

8. *Accident Prevention.*—Precaution shall be exercised at all times for the protection of persons and property. The safety provisions of applicable laws, buildings, and construction codes shall be observed. Machinery and equipment and other hazards shall be guarded in accordance with the safety provisions of the Manual of Accident Prevention in Construction, published by the Associated General Contractors of America, to the extent that such provisions are not inconsistent with applicable law or regulation.

9. *Domestic Materials.*—Unless contrary to law, in the performance of this contract the contractor, subcon-
(506) tractors, materialmen, or supplies shall use only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, and only such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States, except, unless otherwise required by law, foreign materials, articles, or supplies may be purchased, upon obtaining the consent of the Owner, if the foreign materials, articles, or supplies are lower in cost after the following differentials are applied in favor of domestic articles, materials, or supplies:

On purchases where the foreign bid is $100 or less, a differential of 100% will apply;

On purchases where the foreign bid exceeds $100, a differential of 25% will apply.

10. (a) *Inspection.*—The Owner reserves the right to permit such inspectors and inspection as it sees fit and hereby requires that such inspectors shall have the right to inspect all work as it progresses, and shall have access to all pay rolls, records of personnel, invoices of materials, and any and all other data relevant to the performance of this contract. The contractor shall submit to the Owner, through his authorized agents, the names and addresses of all personnel and such schedules of the cost of labor, costs and quantities of materials, and other items, supported as to correctness by such evidence, as, and in such form as, the Owner, through his authorized agents, may require.

(b) Facilities shall be provided as set forth in the specifications for the use of the Government Inspector.

11. *Reports.*—The contractor and each subcontractor shall report on forms to be furnished by the United States Department of Labor, the number of persons on their respective pay rolls directly connected with the project, the aggregate amounts of such pay rolls, and the man-hours worked, wage scales paid to the various classes of labor, and the total expenditures for materials. Forms will be supplied by the Department of Labor on the 15th of each month. The reports will cover all pay rolls from the 15th of the previous month to the 15th of the current (507) month. One copy of each of such monthly reports is to be furnished to the State Director, one to the Division of Economics and Statistics, P. W. A., and one to the United States Department of Labor, prior to the 5th day of the following month. The contractor shall also furnish to the Owner, to the State Director, and to the United States Department of Labor, the names and addresses of all subcontractors on the work at the earliest date practicable.

12. *Payments.*—(a) The contractor shall provide all labor, services, materials, and equipment necessary to

perform and complete the work under this contract. Except as otherwise approved by the Owner, the contractor (1) shall pay for in full all transportation and utility services on or before the 20th day of the month following the calendar month in which such services are rendered, and (2) shall pay for all materials, tools, and other expendible equipment, to the extent of 90 per cent of the cost thereof, on or before the 20th day of the month following the calendar month in which such materials, tools, and equipment are delivered to the project, and the balance of the cost within 30 days after completion of that part of the work in or on which such materials, tools, and other equipment are incorporated or used.

(b) *Payment of Subcontractor.*—In the absence of other provisions in this contract more favorable to the subcontractor, the contractor shall pay each subcontractor, within 5 days after each payment made to the contractor, the amount allowed the contractor for and on account of the work performed by the subcontractor, to the extent of the subcontractor's interest therein.

13. *Signs.*—The contractor shall furnish signs bearing the legend:

"FEDERAL PUBLIC WORKS PROJECT NO....."

as required in the specifications and shall erect the same at such locations as may be designated by the Owner.

14. *Subcontracts.*—Paragraphs 1 to 4, inclusive, 6, 8 to 13, inclusive, 17, the Regulations Issued Pursuant to So-called "Kick-Back Statute" and Section 35 of the Criminal Code, as amended, shall be inserted verbatim in all construction subcontracts under this contract.

(508) 15. *Assignment of Contract.*—The contractor shall not assign this contract or any part hereof without the approval of the Owner, nor with the consent of surety unless the surety has waived its right to notice of assignment.

16. *Termination for Breach.*—In the event that any of the provisions of this contract are violated by the con-

tractor or by any of his subcontractors, the Owner may serve written notice upon the contractor and the surety of his intention to terminate such contract, such notices to contain the reasons for such intention to terminate the contract, and, unless within 10 days after the serving of such notice upon the contractor such violation shall cease and satisfactory arrangement for correction be made, the contract shall, upon the expiration of said 10 days, cease and terminate. In the event of any such termination, the Owner shall immediately serve notice thereof upon the surety and the contractor, and the surety shall have the right to take over and perform the contract, provided, however, that if the surety does not commence performance thereof within 30 days from the date of the mailing to such surety of notice of termination, the Owner may take over the work and prosecute the same to completion by contract for the account and at the expense of the contractor, and the contractor and his surety shall be liable to the Owner for any excess cost occasioned the Owner thereby, and in such event the Owner may take possession of and utilize in completing the work, such materials, appliances, and plant as may be on the site of the work and necessary therefor.

17. *Definitions.*—The term "Act" as used herein refers to Title II of the National Industrial Recovery Act. The term "State Director" as used herein refers to the State Director (P. W. A.) or his duly authorized representative, or any person designated to perform his duties or functions under this agreement by the Administrator. The term "Government Inspector" as used herein refers to State Engineer Inspectors, resident and assistant resident engineer inspectors, and supervising engineers, appointed by the Administrator. The term "materials" as used herein includes, in addition to materials incorporated in the project used or to be used in the operation thereof, equipment and other materials used and/or consumed in the performance of the work. (509) The term "Owner" as used herein refers to the public body, agency, or instrumentality which is a party hereto and for which this contract is to be performed.

The 30-hour week requirement shall be construed—

(a) To permit the limitation of not more than 130

hours' work in any 1 calendar month to be substituted for the requirement of not more than 30 hours' work in any 1 week on projects in localities where a sufficient amount of labor is not available in the immediate vicinity of the work.

(b) To permit work up to 8 hours a day or up to 40 hours a week on projects located at points so remote and inaccessible that camps or floating plants are necessary for the housing and boarding of all the labor employed.

In case it shall be determined prior to advertisement that any projects falls within the terms of (a) hereof, the following proviso shall be added at the end of paragraph 1 (b):

And provided, further, It having been determined prior to advertisement that a sufficient amount of labor is not available in the immediate vicinity of the work, that a limitation of not more than 130 hours' work in any 1 calendar month may be substituted for the requirement of not more than 30 hours' work in any 1 week on the project.

In case it shall be determined prior to advertisement that any project falls within the terms of (b) hereof, the following section shall be substituted in the place of paragraph 1 (b):

(b) *Hours of Labor.*—Except in executive, administrative, and supervisory positions, no individual directly employed on the project shall be permitted to work more than 40 hours in any 1 week nor more than 8 hours in any 1 day. It having been determined prior to advertisement that the work will be located at points so remote and inaccessible that camps or floating plants are necessary for the housing and boarding of all the labor employed, this provision shall apply in lieu of the usual 30-hour terms.

REGULATIONS ISSUED PURSUANT TO SO-CALLED "KICK-BACK STATUTE"

(510) Pursuant to the provisions of Public Act No. 324, Seventy-third Congress, approved June 13, 1934 (48 Stat. 948), concerning rates of pay for labor, the Sec-

retary of the Treasury and the Secretary of the Interior hereby jointly promulgate the following regulations:

SECTION 1. Said Act reads as follows:

To effectuate the purpose of certain statutes concerning rates of pay for labor, by making it unlawful to prevent anyone from receiving the compensation contracted for thereunder, and for other purposes.

Be It Enacted by the Senate and House of Representatves of the United States of America in Congress Assembled. That whoever shall induce any person employed in the construction, prosecution, or completion of any public building, public work, or building or work financed in whole or in part by loans or grants from the United States, or in the repair thereof to give up any part of the compensation to which he is entitled under his contract of employment by force, intimidation, threat or procuring dismissal from such employment, or by any other manner whatsoever, shall be fined not more than $5,000, or imprisoned not more than five years, or both.

SEC. 2. To aid in the enforcement of the above section, the Secretary of the Treasury and the Secretary of the Interior jointly shall make reasonable regulations for contractors or subcontractors on any such building or work, including a provision that each contractor and subcontractor shall furnish weekly a sworn affidavit with respect to the wages paid each employee during the preceding week.

SECTION 2. Each contractor and subcontractor engaged in the construction, prosecution, or completion of any building or work of the United States or of any building or work financed in whole or in part by loans or grants from the United States, or in the repair thereof, shall furnish each week an affidavit with respect to the wages paid each employee during the preceding week. Said affidavit shall be in the following form:

State of .....
County of....., *ss*:

I, ... (name the party signing affidavit), ... (Title), do hereby certify that I am (the employee of) .....
(511) ..... (name of contractor or subcontractor) who supervises the payment of the employees of said contractor (subcontractor); that the attached pay roll is a true and accurate report of the full weekly wages due and paid to each person employed by the said contractor (subcontractor) for the construction of ..... (project) for the weekly pay roll period from the ..... day of ....., 193...., to the ..... day of ....., 193,...., that no rebates or deductions from any wages due any such person as set out on the attached pay roll have been directly or indirectly made; and that, to the best of my knowledge and belief, there exists no agreement or understanding with any person employed on the project, or any person whatsoever, pursuant to which it is contemplated that I or anyone else shall, directly or indirectly, by force, intimidation, threat, or otherwise, induce or receive any deductions or rebates in any manner whatsoever from any sum paid or to be paid to any person at any time for labor performed or to be performed under the contract for the above named project.

Sworn to before me this ..... day of ....., 193.....

SECTION 3. Said affidavit shall be executed and sworn to by the officer or employee of the contractor or subcontractor who supervises the payment of its employees.

Said affidavit shall be delivered, within three days after the payment of the pay roll to which it is attached to the Government representative in charge at the site of the particular project in respect of which it is furnished, who shall forward the same promptly to the Federal agency having control of such project. If no Government representative is in charge at the site, such affidavit shall be mailed within such three-day period to the Federal agency having control of the project.

SECTION 4. At the time upon which the first affidavit with respect to the wages paid to employees is required to be filed by a contractor or subcontractor pursuant to

the requirements of these regulations, there shall also be filed in the manner required by Section 3 hereof a statement under oath by the contractor or subcontractor, setting forth the name of its officer or employee who su-
(512) pervises the payment of employees, and that such officer or employee is in a position to have full knowledge of the facts set forth in the form of affidavit required by Section 2 hereof. A similar affidavit shall be immediately filed in the event of a change in the officer or employee who supervises the payment of employees. In the event that the contractor or subcontractor is a corporation, such affidavit shall be executed by its president or a vice president. In the event that the contractor or subcontractor is a partnership, such affidavit shall be executed by a member of the firm.

SECTION 5. These regulations shall be made a part of each contract executed after the effective date hereof by the Government for any of the purposes enumerated in Section 2 hereof.

SECTION 6. These regulations shall become effective on January 15, 1935.

The clause in the pay roll affidavit which reads "* * * that the attached pay roll is a true and accurate report of the full weekly wages due and paid to each person employed by the said contractor * * * " is construed by the Public Works Administration to mean:

(a) Wages due are the wage earned during the pay period by each person employed by the contractor, less any deductions required by law.

(b) At the time of signing the affidavit, the wages due each employee have either been paid to him in full or are being held subject to claim by him.

(c) Such unpaid wages will be paid in full on demand of the employee entitled to receive them.

The clause " * * * that no rebates or deductions from

any wages due any such person as set out on the attached pay roll have been directly or indirectly made" does not apply to any legitimate deductions mentioned above which enter into the computation of full weekly wages due.

The "Regulations Issued Pursuant to So-Called 'Kick-Back' Statute" shall not be construed to prohibit deductions required by law or deductions for health, sickness, unemployment, or other similar benefits voluntarily authorized by permanent employees of equipment sup-
(513) plies engaged in installation of the equipment at the site of the project.

PENALTY

Section 35 of the Criminal Code, as amended, provides a penalty of not more than $10,000 or imprisonment of not more than 10 years, or both, for knowingly and willfully making or causing to be made "any false or fraudulent statements * * * or use or cause to be made or used any false * * * account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement * * * " relating to any matter within the jurisdiction of any governmental department or agency.

(514) GREENWOOD DIVISION

Equity 451

No. 3971

UNITED STATES CIRCUIT COURT OF APPEALS
FOURTH CIRCUIT

Greenwood County, et al., Appellants,

VS.

Duke Power Company, et al., Appellees.

MANDATE

United States District Court
West. Dist. of So. Car.
FILED
DEC. 7, 1935
W. D. WHITE, Clerk.

UNITED STATES OF AMERICA, *ss*:
The President of the United States of America,

To the Honorable Judge of the District Court of the United States for the Western District of South Carolina.

Greeting:

WHEREAS, lately in the District Court of the United States for the Western District of South Carolina, before you or some of you, in a cause between Duke Power Company and Southern Public Utilities Company, Complainants, and Greenwood County and E. L. Brooks, S. A. Agnew and E. I. Davis, as members of and constituting The Finance Board for Greenwood County, Defendants; In Equity No. 451; wherein Harold L. Ickes, as Federal Emergency Administrator of Public Works was made a party defendant; and wherein the decree of the said District Court, entered in the said cause on the 26th day of August, 1935, is in the words following, to-wit:

"This cause came on to be further heard at this term and was argued by counsel; and thereupon, upon consid-
(515) eration thereof, and pursuant to the opinion filed herein and the findings of fact and conclusions of law stated in the opinion, it is ORDERED, ADJUDGED AND DECREED, as follows:

"1. That the defendants, their agents, attorneys and successors in office and each and every one of them be, and they hereby are, permanently enjoined and restrained from carrying out and performing the agreement dated as of December 8th, 1934, a copy of which, marked Exhibit A, is attached to and made a part of the answer of

the defendant, Harold L. Ickes, as Federal Emergency Administrator of Public Works or from construing or causing to be construed by use of Federal Funds said Buzzard Roost Project referred to and described in the original Bill of Complaint or any part thereof.

"2. That the defendant, Harold L. Ickes, as Federal Emergency Administrator of Public Works, his attorneys, agents and successors in office, and each of them, be, and they hereby are, permanently enjoined and restrained from advancing or paying over to Greenwood County or to any officer, agent or representative of said County any federal funds for the purpose of constructing or operating said Buzzard Roost Project, or any part thereof, and from otherwise appropriating or permitting to be used any federal funds in furtherance of said project.

"3. That the defendants, Greenwood County, E. L. Brooks, S. A. Agnew, and E. I. Davis, as members of and constituting The Finance Board for Greenwood County, and all other officers, agents and representatives of said County, and their successors in office, and each of them be, and they hereby are, permanently enjoined and restrained from receiving, accepting or using any federal funds for the purpose of constructing or operating said Buzzard Roost Project.

"That the plaintiffs recover of the defendant, Greenwood County, the costs of this action to be taxed by the Clerk according to law.

H. H. WATKINS,
United States District Judge."

August 26, 1935.

(516) as by the inspection of the transcript of the record of the said Dstrict Court, which was brought into the United States Circuit Court of Appeals for the Fourth Circuit by virtue of the appeal of the said Greenwood County and E. L. Brooks, S. A. Agnew and E. I. Davis, members of and constituting The Finance Board of Greenwood County, and Harold L. Ickes as Federal Emergency Administrator of Public Works, agreeably to the Act of Congress, in such case made and provided, fully and at large appears,

AND WHEREAS, in the term of November, in the year of our Lord one thousand nine hundred and thirty-five, the said cause came on to be heard before the said United States Circuit Court of Appeals for the Fourth Circuit, on the motion of Harold L. Ickes, Federal Emergency Administrator of Public Works, one of the appellants, that the said cause be remanded to the District Court for the Western District of South Carolina to the end that that court may reconsider its decision in the light of the contract entered into between the United States and the County of Greenwood, South Carolina, dated November 30, 1935:

It is ordered that said cause be remanded to the said District Court to the end that that court may reconsider its decision in the light of the said contract and may take such further action as may be appropriate in the premises.

The Court below is requested to hear the cause thus remanded with all convenient dispatch and to certify his findings of fact and conclusions of law to this court as soon as possible, to the end that the cause may be heard by this court upon appeal on the first Monday in January, 1936, in accordance with the agreement of counsel this day made in open court to the effect that they would press for a speedy hearing of the cause and docket the appeal from the decision of the court below for hearing on the date aforesaid without reference to the rules regulating appeals, filing and printing of briefs, etc. Let mandate issue forthwith.

This the 5th day of December, 1935.

JOHN J. PARKER,
Senior Circuit Judge.

You, therefore, are hereby commanded that such further proceedings be had in said cause in accordance (517) with the order of this Court as according to right and justice and the laws of the United States, are to be had, the said appeal notwithstanding.

WITNESS the Honorable Charles Evans Hughes, Chief Justice of the United States, the sixth day of De-

cember, in the year of our Lord one thousand nine hundred and thirty-five.

CLAUDE M. DEAN,
Clerk of the United States
Circuit Court of Appeals
For the Fourth Circuit.

(518) **REPORT TO CIRCUIT COURT OF APPEALS OF FINDINGS OF FACT AND CONCLUSIONS OF LAW PURSUANT TO ORDER OF REMAND.**

Filed Dec. 31, 1935.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF SOUTH CAROLINA.

Duke Power Company and Southern Public Utilities Company, Plaintiffs,

vs. EQUITY 451.

Greenwood County and E. L. Brooks, S. A. Agnew and E. I. Davis, as members of and constituting The Finance Board for Greenwood County, and Harold L. Ickes, as Federal Emergency Administrator of Public Works, Defendants.

This cause has again come before me upon a mandate of the Circuit Court of Appeals issued pursuant to an order dated December 5, 1935, which, being a part of the records of that Court, need not here be set out in full. The cause was remanded to the District Court to the end that it might reconsider its decision in the light of a contract entered into between the United States and the County of Greenwood, South Carolina, dated November 30, 1935, and might take such further action as might be appropriate in the premises. The order embraced a request that the cause thus remanded should be heard with all convenient dispatch, and that this Court certify its findings of fact and conclusions of law to the Circuit

Court of Appeals as soon as possible, to the end that the cause may be heard on appeal on the first Monday in January, 1936, in accordance with counsels' agreement made in open court that they would press for a speedy hearing of the cause, and docket the appeal from the decision of the Court below for hearing on the aforementioned date, without reference to the rules regulating appeals, filing and printing of briefs, etc. Pursuant to said order and mandate, a hearing was had at Spartanburg, South Carolina, on December 12 and 13, 1935, attended by counsel for all the parties. This was the earliest date upon which it was found possible to procure the attendance of counsel and witnesses. The first day was consumed in the preliminary discussions of the (519) cause and the taking of testimony, and the second day in hearing argument. The testimony offered included the oral testimony of the Public Works Administrator, Mr. Harold L. Ickes, of E. I. Davis, Secretary of the Finance Board of Greenwood County, and of D. T. Duncan, Chief Engineer on the Buzzard Roost project. There was also submitted the Minute Book of the Greenwood County Finance Board, showing authority for the execution of the new contract. In addition to this was presented, subject to objection, certain documentary evidence, including, *inter alia,* a book entitled, "Back to Work", by Harold L. Ickes, with particular reference to certain statements therein contained. In order to expedite the hearing, it was agreed by counsel that all oral evidence other than that relating to the formal execution of the new contract referred to, should be taken subject to objection and for the purpose of making up the record, and that after argument, the Court could rule upon its competency. Prior to the introduction of any testimony, one of plaintiffs' counsel stated that he had previously called the attention of Mr. Holtzoff, one of defendants' counsel, to the fact that the only pleadings now before the Court, and the only issues now before the Court, were the pleadings and issues before the Court prior to the entry of the final decree in this case, and that since the entry of the final decree, no supplemental pleadings have been filed, and no new issues have been raised. In reply, Mr. Holtzoff admitted his statement that the issues were the issues formed by the present pleadings, and that under the terms of the order of remand, there was not time to file supplemental pleadings, as would

be done were this case to proceed in the usual due fashion. Pursuant to this understanding, the Court heard the testimony, at the conclusion of which counsel for the defendants submitted a motion, as follows:

> "1. Now comes the defendants, jointly, separately and severally, and all and each of them, at the close of the evidence, and move the Court herein that the record on appeal in this cause, be supplemented by adding thereto and making a part thereof all of the testimony of all of the witnesses offered, heard or excluded by the Court at its hearing of said cause on the 12th day of December, 1935, together with all exhibits tendered or offered to, accepted or excluded by the Court during the hearing thereof on said date.
>
> 2. And said defendants further move that the (520) separate and several answers of the defendants herein be taken as amended and supplemented in accordance with the above-mentioned proof and evidence, both oral and documentary, adduced at the hearing of this Court held on the 12th day of December, 1935, in accordance with the order of remand issued therefor by the Circuit Court of Appeals of the Fourth Circuit on December 5, 1935, only to the extent, however, of such testimony as was submitted, offered and/or tendered by said defendants at such hearing."

So much of the motion as was embraced under Subhead 1 was granted, and that embraced under Subhead 2 was overruled and disallowed. In overruling the motion, the Court stated that it did not think, first of all, that it comes within the scope of the order, and, second, that it did not think it had a right to allow an amendment under the status of this case, and, particularly, that it would be an abuse of discretion for the amendment to come now.

The Court holds, in ruling on the testimony, that all evidence relating to the formal execution of the new contract, and the contract itself as admitted in evidence, has been properly admitted under the terms of the order of the Circuit Court of Appeals, but for reasons that will be more fully hereinafter discussed, the oral evidence of Mr. Ickes, and documentary evidence relating to other

matters such as rates and purposes and policies of the Administration, are incompetent, and must be excluded from consideration. The only documentary evidence admissible is such as related to the execution of the new contract, and authority therefor. In addition to the facts contained in the foregoing preliminary statement, I further submit the following:

FINDINGS OF FACTS:

1. This cause was heard at the summer term, 1935, of this Court; the final opinion was filed August 10, 1935; the final decree was entered August 26, 1935, after all counsel then of record for the defendants had been duly notified, in order that they might take exceptions and be heard as to the provisions of said final decree at and before the time of its filing; and the term of court at which the decree was entered ended on September 9, 1935. All the defendants appeared to the Circuit Court of Appeals of this Circuit, the petition for appeal having been filed and allowed on August 26, 1935. The appeal (521) bond was approved August 30, 1935. The transcript of record on appeal was filed in the Circuit Court of Appeals on October 11, 1935. No motion was made in the trial court after the filing of the final decree and prior to the end of the term when the Court had lost jurisdiction, nor has any since been made before it to reopen the case because of after-discovered evidence, or because of a change of the law, or because of its overlooking any material point of law or fact.

2. The contract of November 30, 1935, makes no change in the character, scope, or purpose of the project, or in the nature of the business in which it would engage or the territory in which it would operate in the event it should be constructed and put in operation. Nor does the new contract make any change in the amount of the Federal funds to be advanced by the Administrator for the construction of the project. The Administrator has heretofore advanced to the officials of the County, under the contract of December 8, 1934, the sum of $65,000.00 for the construction of the project. The money so advanced has been expended in work on the project and if the parties were permitted to proceed, the project would be constructed and put in operation as originally contemplated. It is further significant that there is no

evidence that any new application for the loan and grant was filed by the County, and it is to be assumed that the new contract was entered into pursuant to the original application.

3. The new contract omits certain specific provisions contained in the old contract giving the Administrator supervision and direction over the construction of the project; but the control of the Administrator over the construction, although provided for in more general terms, is effectively retained. This will more fully appear by reference to the contract itself, and particularly to the provisions of Exhibit "A", thereto attached and made a part thereof. Under the new contract, as under the old, the entire cost of construction would be defrayed out of the Federal funds to be advanced by the Administrator, and under neither contract does Greenwood County assume any obligation for the construction and completion of the project, except by the use of such funds. Particular attention is called to the requirements in Exhibit "A", made a part of the new contract, which subject contractors on an intrastate project to Federal regulation, such as those issued pursuant to the so-called "Kick-Back Statute", and other supervisory requirements, such as those relating to sources of labor, hours of work, collective bargaining, reports, and the (522) designation of the project as a Federal Public Works project, etc.

4. The new contract eliminates the provision referred to in the original seventh finding of fact requiring the County to "adopt a resolution satisfactory in form and substance to the Administrator providing for rates to be charged for services afforded by the hydro-electric system." But the rates to be charged for the power to be produced by the project were adopted by the County with the approval of the Administrator under the provisions of the contract of December 8, 1934, and have not been changed. On the basis of these rates the County, prior to the modification or change of said contract, made contracts with customers of plaintiffs for the sale of most of the power which would be produced. These contracts for the sale of said power have not been changed, and if the project is constructed will be carried out.

5. The sixth finding of fact made on the original hearing relates to the power policy of the Federal Emer-

gency Administrator of Public Works in making or withholding appropriations of Federal funds to municipally-owned power projects, and the evidence taken on the original hearing shows that the approval of the loan and grant in this case was made in order to effectuate this policy. The evidence introduced by defendants on the last hearing shows, and the Court finds as a fact, that there has been no change in this power policy since the entry of the original decree on August 26, 1935.

6. I find specifically that the cheaper rates shown by the contracts between Greenwood County and its prospective customers will necessarily furnish the most effective "yardstick" or measurement of the rates to be charged by its competitors, both in connection with, and independently of, the purposes and policies of the Public Works Administration, as established by the evidence on the former hearing.

LEGAL ISSUES PRESENTED AND CONSIDERED:

This Court regrets that the necessity of immediate determination of the issues presented to it, under the order of remand, precludes such investigation of the legal issues presented for its determination, and such investigation and discussion of the authorities bearing thereon, as the importance of the cause would properly demand. At the beginning of the hearing, counsel for (523) plaintiffs called attention to their objection to the order of remand, as presented by them to the Appellate Court. We held, however, and understood it to be conceded, that this Court was, and is, bound by the order, and could, and can, consider only such questions as involve the scope and construction of the requirements of the order. This requires unequivocally, as I understand it, the admission in evidence of the new contract of November 30, 1935, and a determination, under my findings of fact and conclusions of law, of the force and effect of this contract upon my former decisions. As thorough an investigation of the authorities as has been possible under the circumstances since the order of remand was issued, taken in connection with considerable previous investigation on the issues involved, has convinced me that the law does not permit a reopening of the evidence in this case as to the aims and purposes of the Public Works Administration, nor as to the reason-

ableness of the rates charged by plaintiffs, as to the adequacy of plaintiffs' service, and other issues about which evidence was taken, and which were fully determined upon that evidence, at the former trial. Furthermore, the promptness required for the rehearing by this Court, and its determination, indicates conclusively to my mind that the Circuit Court of Appeals did not intend by its order that the pleadings should be amended and the evidence reopened to allow the presentation and consideration of any facts other than the force and effect of the new contract, and to what extent, if any, its provisions might require a reversal or modification of my former determinations. In the case of *Buffington v. Harvey*, 95 U.S. 99, 24 L.ed. 381, Mr. Justice Bradley, in discussing a proceeding in the nature of a bill of review founded on new matter, stated that an issue of fact could be raised "only as it relates to the truth and sufficiency of such new matter, and the propriety of its admission for the purpose of opening the decree in the original cause," and further that "the evidence in the original cause cannot be discussed for the purpose of questioning the propriety of the original decree as based on such evidence. It can only be adverted to, if at all, for the purpose of showing the relevancy and bearing of the new matter sought to be introduced into the cause." See, also, 4 Cyc. Fed. Proc., Section 1155 and 1139; Hughes on Federal Practice, Vol. 7, Sec. 4493; *Lavagnino v. Prall*, 281 Fed. 581, 583; *Hart Steel Co. v. Railroad Supply Co.*, 244 U.S. 294, 61 L.ed. 1148; *McCarthy v. Lumber Co.*, 219 Mass. 566; 34 C.J. 743; 54 C. J. 720; *Burlen* v. *Shannon*, 99 Mass. 200. As stated above, the (524) term of court at which the original decree was entered expired on September 9, 1935. No motion for a new trial was made before the trial court prior to the time it lost jurisdiction, and the matter now presented to the Court under the order of remand relates entirely to what has occurred since the trial of the cause; and the order of remand is limited to a consideration of the effect of the new contract upon the issues decided, and does not contemplate the reopening of the cause for a retrial of issues there properly presented and there properly decided, or if improperly decided, to be reversed by the Appellate Court only for errors appearing in that record. *Roemer v. Simon*, 91 U.S. 149, 23 L.ed. 267; *Realty Acceptance Corp. v. Montgomery*, 284 U.S. 547, 76 L.ed.

476; *Jensen v. New York Life Ins, Co.*, (CCA-8), 59 F.(2d) 957; *Chisholm-Ryder Co. v. Buck*, (CCA-4), 65 F.(2d) 735. Equity Rule 69 provides that "No rehearing shall be granted after the term at which the final decree of the court shall have been entered and recorded, if an appeal lies to the Circuit Court of Appeals or the Supreme Court." In Hughes on Federal Practice, Vol. 8, Sec. 5656, the rule is stated, as follows: "No principle is better settled, or of more universal application, than that no court can reverse or annul its own final decrees or judgments, for errors of fact or law, after the term in which they have been rendered, unless for clerical mistakes or to reinstate a cause dismissed by mistake." At the former hearings, the Federal Emergency Administrator of Public Works was represented by Henry T. Hunt, Esq., who is not only a lawyer of great ability, but who had served as chairman of the Electric Power Board of Review. One of the witnesses produced by him was Mr. Clarence E. Rose, a member of the engineering staff. He testified at length in respect to the policies and practices of the Public Works Administration relating to the establishment of these projects, in connection with their effect upon the rates of competitive companies, as well as the engineering features of the project. All questions relating to the reasonableness of the rates of plaintiffs were fully testified to by both sides. To permit the excluded testimony of Secretary Ickes would not only reopen the trial of all issues regarding rates, reasonableness of service, and the policies of the Public Works Administration, but would be in contradiction of the Government's own witness, and this after the lapse of several months after he was advised of the general result of the decision and his counsel was advised of all the details of the trial. While it is true that Mr. Ickes testified that he had not (525) read the testimony of Mr. Rose until very recently, he must, of course, be charged with constructive notice of all the proceedings in a cause in which he was a defendant and represented by able counsel.

We call particular attention to the able and interesting opinion of Mr. Justice Roberts in the case of *Realty Acceptance Corp v. Montgomery, supra,* and the authorities therein cited, and also to *Barker Painting Co. v. Local No. 734, Brotherhood of Painters, etc., et al.*, 281 U. S. 462, 50 S.Ct. 356, 74 L.ed. 957; and *Delaware &*

Hudson Co. v. Stankus, (CCA-3), 63 F.(2d) 887. The limitations upon the court below are discussed by the Circuit Court of Appeals of this Circuit in the cases of *Chisholm-Ryder Co v. Buck, supra; Underwood v. Commissioner of Internal Revenue,* 56 F.(2d) 67; and *Finefrock v. Kenova Mine Car Co.,* 22 F.(2d) 627. In the last mentioned case the Court said that there is abundant authority for the Appellate Court to remand, without determining and disposing of a case, "if the case has been tried on a wrong theory, or the record is not in condition for the Appellate Court to decide the questions presented, with justice to all the parties concerned."

Under the rules of law established by the foregoing cases, and the facts of the case as hereinbefore stated, the Court has arrived at the following.

CONCLUSIONS OF LAW:

1. The conclusions of law on which the original decree was based are fully set forth in my two prior opinions, and need not be further discussed. I find that the substitution of the new contract introduced in evidence, along with such testimony as was admitted by this Court to be competent, does not in any way call for a modification of the conclusions stated in my former opinions, and does not modify their application to this cause. All conclusions of law, therefore, stated in the first of my former opinions, as modified by my second opinion, are hereby reaffirmed.

2. I conclude further that the order of injunction heretofore entered by me under date of August 26, 1935, is, and should be, made applicable to the new contract introduced in evidence at this last hearing.

3. In order that the Appellate Court may be fully advised of my conclusions, I will state that it is my judg-
(526) ment that even if the excluded testimony at this last hearing should have been admitted, considered, and accepted as true, it would be insufficient, as a matter of law, to furnish a basis for any modification of my former conclusions of law. Whatever might be the purposes, policies, and practices of the Public Works Administration in reference to competitors, in financing the instant enterprise the result to the plaintiffs would be the same.

The lower rates which the enterprise may be able to charge because of Government aid through its loan and grant—particularly the latter—would effectively establish a "yardstick" or rate of charge which plaintiffs must inevitably meet, or have their business *pro tanto* destroyed.

I herewith present and certify the foregoing discussion, findings of fact, and conclusions of law for the consideration of the Circuit Court of Appeals of the Fourth Circuit.

(s) H. H. WATKINS,
United States District Judge

Anderson, S. C.,
December 21, 1935.

(527) **DECREE.**

Filed December 21, 1935.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF SOUTH CAROLINA.

Duke Power Company and Southern Public Utilities Company, Plaintiffs,

vs.

Greenwood County, and E. L. Brooks, S. A. Agnew and E. I. Davis, as members of and constituting The Finance Board of Greenwood County, and Harold L. Ickes, as Federal Emergency Administrator of Public Works, Defendants.

This cause came on to be heard at this term pursuant to the mandate of the Circuit Court of Appeals issued December 6th, 1935, upon the application of the defendant, Harold L. Ickes, as Federal Emergency Administrator of Public Works, that the court reconsider its decree entered herein under date of August 26, 1935, in the light of the contract entered into between the United States of America and the County of Greenwood, South Carolina, dated November 30, 1935, and set aside and vacate said decree. The cause was argued by counsel, and thereupon, and upon consideration thereof, and pursuant to the

opinion filed herein under date December 21, 1935, entitled "Report to the Circuit Court of Appeals of Findings of Fact and Conclusions of Law Pursuant to Order of Remand", and the findings of fact and conclusions of law stated therein;

IT IS ORDERED, ADJUDGED AND DECREED that the application to set aside and vacate the decree for injunction entered and filed herein under date of August 26, 1935, be, and the same hereby is, denied.

(signed) H. H. WATKINS,
December 21, 1935. United States District Judge.

(528) **ASSIGNMENT OF ERRORS.**

Filed Dec. 31, 1935.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF SOUTH CAROLINA.

Duke Power Company and Southern Public Utilities Company,
Plaintiffs,

vs.

Greenwood County and E. L. Brooks, S. A. Agnew and E. I. Davis, as members of and constituting The Finance Board of Greenwood County, and Harold L. Ickes, as Federal Emergency Administrator of Public Works, Defendants.

On this 31st day of December, 1935, came the defendants, Greenwood County and E. I. Brooks, S. A. Agnew and E. I. Davis, members of and constituting The Finance Board of Greenwood County, by Rupert F. Davis, W. H. Nicholson and D. W. Robinson, Jr., their Solicitors, and say that the Report to Circuit Court of Appeals of Findings of Fact and Conclusions of Law Pursuant to Order of Remand entered in the above cause on the 21st day of December, 1935, is erroneous and unjust to these defendants:

1. Because the Court erred in refusing to consider the oral tesimony of the witnesses, Harold L. Ickes, E. I. Davis and D. T. Duncan and refusing to consider the documentary evidence offered at the hearing December 12-13, 1935; the error being that the evidence was competent and admissible under the Order of the Circuit Court of Appeals of December 5, 1935.

2. Because the Court erred in refusing to permit the answers of the defendants to be amended to conform to the proof; the error being that it was necessary to amend the answers to show the execution of the new contract in accordance with the order and mandate of the Circuit Court of Appeals.

3. Because the Court ererd in finding that the contract of November 30, 1935, made no change in the character, scope or purpose of the Buzzard Roost project; (529) the error being that the contract of November 30, 1935, materially changed the situation from that presented under the contract of December 8, 1934, with particular reference to the rate clauses and the construction clauses.

4. Because the Court erred in finding as a fact that under the new contract the Administrator of Public Works effectively retained control over the construction of the project; the error being that under the contract of November 30, 1935, the control and supervision of the construction is in the hands of Greenwood County, and the Court should have so held.

5. Because the Court erred in holding in its fourth finding of fact that under the contract of November 30, 1935, the Administrator of Public Works retained a degree of control over the rates to be charged by Greenwood County; the error being that no control of the rates is given under this contract.

6. Because the Court erred in its fifth finding of fact in holding that the evidence introduced by the defendants at the hearing on December 12-13, 1935, that there has been no change in the power policy since the entry of the original contract; the error being:

(a) That the Court having excluded this testimony it cannot base a finding of fact thereon;

(b) The testimony shows that the Public Works Administration has no power policy separate and distinct from the general policy of the Public Works Administration.

7. Because the Court erred in its sixth finding of fact to the effect that the contract between Greenwood County and its prospective customers would furnish an effective yardstick of the rates to be charged by the County's competitors; the error being

(a) The Court having held that it could not inquire into matters effected by testimony given before the final decree it was erroneous for the Court to make this finding based upon testimony taken prior to the 26th of August, 1935;

(b) That the effect of contracts lawfully entered into between Greenwood County and its prospective customers is not the subject of judicial review.

8. Because the Court erred in refusing to consider any testimony other than the formal proof of the contract (530) of November 30, 1935; the error being that under the order and mandate of the Circuit Court of Appeals the Court should have considered all of the testimony offered by the defendants.

9. Because the Court ererd in its first conclusion of law in holding that the substitution of the new contract does not in any way call for a modification of the previous conclusions of law; the error being that with the new contract before the Court the Court should have held despite its conclusions as to the constitutionality of the statute that the plaintiffs have no right, in view of the terms of the new contract, to maintain this action.

10. Because the Court erred in refusing to set aside its injunction order of the 26th of August, 1935, and in making that injunction order applicable to the new contract of November 30, 1935; the error being that in view of the terms of the new contract the Public Works Ad-

ministration and Greenwood County should not be enjoined from proceeding with the Buzzard Roost projects under the terms of that contract.

11. Because the Court erred in holding that even if it admitted testimony offered at the hearing December 12-13, 1935, such testimony was insufficient to furnish a basis for a modification of the former conclusions of law; the error being that under such testimony the Court should have held the plaintiffs had no right to maintain this Bill.

12. Because the Court erred in holding that the effect of the financing of this project by the Public Works Administration is to furnish a yardstick for rates for privately owned utilities; the error that the Court should have found:

(a) That such was not the effect; and

(b) That the ffect of the legal action of the Public Works Administration is not a subject for judicial review.

W. H. NICHOLSON,
R. F. DAVIS,
ROBINSON & ROBINSON,
Attorneys for Greenwood County
and its Finance Board.

December 23, 1935.

(531) **ASSIGNMENTS OF ERROR OF THE FEDERAL EMERGENCY ADMINISTRATION OF PUBLIC WORKS.**

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF SOUTH CAROLINA.

Filed Dec. 31, 1935.

Duke Power Company and Southern Public Utilities Company,
Plaintiffs,
vs. EQUITY 451

Greenwood County, Et Al.,
Defendants.

Now comes the defendant, Harold L. Ickes, as Federal Emergency Administrator of Public Works, and says that in the report to the Circuit Court of Appeals of findings of fact and conclusions of law pursuant to order of remand, filed in the above cause on the 21st day of December, 1935, there is manifest error, and for error he assigns the following:

1. The District Court erred in making the finding contained in the first sentence of Finding on Fact No. 2 and likewise the last two sentences of Finding of Fact No. 2.

2. The District Court erred in finding in fact No. 3 that the control of the Administrator over the construction of the project is effectively retained under the new contract.

3. The District Court erred in making all of the finding of fact No. 4 except the first sentence thereof.

4. The District Court erred in making Finding of Fact No. 5.

5. The District Court erered in making Finding of Fact No. 6.

6. The District Court erred in making conclusion of law No. 1.

7. The District Court erred in making conclusion of law No. 2.

8. The District Court erred in making the conclusion of law No. 3.

(532) 9. The District Court erred in excluding the testimony of Harold L. Ickes offered, tendered and excluded at the hearing.

10. The District Court erred in excluding the testi-

mony of the witness E. I. Davis offered, tendered and excluded at the hearing.

11. The District Court erred in excluding the testimony of the witness D. T. Duncan offered, tendered and excluded at the hearing.

12. The District Court erred in excluding from evidence the written report of Harold L. Ickes as Federal Emergency Relief Administrator of Public Works made to the Congress of the United States, Senate Document No. 167, 73d Congress 2nd Session, and identified as defendants' exhibit 70.

13. The District Court ererd in denying defendants' motion that the answer of the defendant Ickes be amended and supplemented to conform to the proof, both oral and documentary, adduced at the hearing in accordance with the order of remand, only to the extent, however, of the testimony submitted, offered and tendered by the several defendants.

14. The District Court erred in denying the motion of the defendants that the answer of the defendant Ickes be amended and supplemented to conform to the proof, both oral and documentary, as introduced in accordance with the new contract of November 30, 1935.

15. The District Court erred in making the conclusion of law that this Court may not consider any evidence other than the new contract between the defendants.

16. The District Court erred in making the conclusion of law of this Court that even if said excluded testimony had been accepted and considered by it, that the same was not sufficient in law to warrant a change in defendants original findings or conclusions of law stated thereon.

WHEREFORE, the defendants, Harold L. Ickes, as Federal Emergency Administrator of Public Works, prays that the decree herein be reversed, and that the (533) bill of complaint be dismissed, and that said de-

fendant have all other and further relief appropriate in the premises.

JAS. W. MORRIS,
Assistant Attorney General.
ALEXANDER HOLTZOFF,
Special Assistant to the Attorney General.
JOHN W. SCOTT,
Special Assistant to the Attorney General.
JEROME N. FRANK,
Counsel for the Federal Emergency Administrator of Public Works.

December 31, 1935.

United States District Court
West. Dist. of So. Car.
Dec. 31, 1935.
FILED
.....A. M. .....P. M.
W. D. WHITE, Clerk.

(534) **AMENDED ASSIGNMENT OF ERRORS.**

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF SOUTH CAROLINA.

Duke Power Company and Southern Public Utilities Company, Plaintiffs,

vs.

Greenwood County and E. L. Brooks, S. A. Agnew and E. I. Davis, as members of and constituting The Finance Board of Greenwood County, and Harold L. Ickes, as Federal Emeregncy Administrator of Public Works, Defendants.

Equity No. 451

On this 21st day of December, 1935, came the defendants, Greenwood County and E. L. Brooks, S. A.

Agnew and E. I. Davis, members of and constituting The Finance Board of Greenwood County, by Rupert F. Davis, W. H. Nicholson and D. W. Robinson, Jr., their Solicitors and say that the Report to Circuit Court of Appeals of Findings of Fact and Conclusions of Law pursuant to Order of Remand and the Decree of Injunction entered in the above cause on the 21st day of December, 1935, is erroneous and unjust to these defendants for the reasons set out in the original Assignment of Errors, dated December 31, 1935, record pages 593-592, and for the additional reason:

13. Because the Court erred in granting an injunction and refusing to dismiss the Bill; the error being that the Court should have held:

(a) That the plaintiffs have no standing in Court to maintain the Bill and

(b) That the Administrator of Public Works and Greenwood County had full constitutional and statutory authority to enter into the loan and grant agreement of November 30, 1935.

WHEREFORE Greenwood County and its Finance Board pray that the Decree herein be reversed and that the Bill of Complaint be dismissed and that these defendants have all other and further relief appropriate in the premises.

W. H. NICHOLSON,
RUPERT F. DAVIS,
ROBINSON & ROBINSON,
Attorneys for Greenwood County
and its Finance Board

December 31, 1935.

United States District Court
West. Dist. of So. Car.
Dec. 31, 1935.
FILED
.....A. M. .....P. M.
W. D. WHITE, Clerk.

(535) **AMENDED ASSIGNMENT OF ERRORS OF THE FEDERAL EMERGENCY ADMINISTRATOR OF PUBLIC WORKS.**

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF SOUTH CAROLINA.

Duke Power Company and Southern Public Utilities Company, Plaintiffs,
vs.
Greenwood County, et al, Defendants.
} Equity No. 451

Now comes the defendant, Harold L. Ickes, as Federal Emergency Adminstrator of Public Works and says that in the report of the Circuit Court of Appeals of findings of fact and conclusions of law pursuant to order of remand and decree of injunction filed in the above cause on the 21st day of December, 1935, there is manifest error, and for error he assigns the following:

The assignment of errors as set out on pages 596-598 of the Record, dated December 31, 1935; and for the additional reason:

17. Because the Court erred in granting an injunction and refusing to dismiss the Bill; the error being that the Court should have held:

(a) That the plaintiffs have no standing in Court to maintain the Bill; and

(b) That the Administrator of Public Works and Greenwood County had full constitutional and statutory authority to enter into the loan and grant agreement of November 30, 1935.

WHEREFORE, the defendant, Harold L. Ickes, as Federal Emergency Administrator of Public Works, prays that the decree herein be reversed, and that the

Bill of Complaint be dismissed, and that said defendants have all other and further relief appropriate in the premises.

JAS. W. MORRIS,
Assistant Attorney General.
ALEXANDER HOLTZOFF,
Special Assistant to the Attorney General.
JOHN W. SCOTT,
Special Assistant to the Attorney General.
JEROME N. FRANK,
Counsel for the Federal Emergency Administrator of Public Works.

December 31, 1935.